2901

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, FEBRUARY 9, 2000
(VOLUME 21, PAGES 2901-3067)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

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WEDNESDAY, FEBRUARY 9, 2000 9:10 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD MORNING, EVERYBODY.

BEFORE WE START TODAY, ONE HOUSEKEEPING MATTER THAT JUDITH HAS BROUGHT TO MY ATTENTION. AND THAT IS, YOU LAWYERS ARE GOING TOO FAST, AND THE WITNESS IS TOO.

YOU HAVE GOT TO MAKE A CONSCIOUS EFFORT TO SLOW DOWN, BECAUSE ONE OF THE THINGS WE ARE DOING OUT HERE IS MAKING A RECORD, AS YOU KNOW, AND IF SHE CAN'T IT DOWN, WE

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ARE NOT GOING TO GET A RECORD.
ANOTHER THING YOU CAN ALL KEEP IN MIND, WHICH I SAID BEFORE, WHICH IS IF SHE CAN'T GET IT, THE CHANCES ARE THAT THE JURY AND THE COURT IS NOT GETTING IT EITHER. AND IF NOBODY IS GETTING IT, THEN WHY ARE WE DOING IT?
SO LET'S SLOW DOWN. WE REALLY HAVE TO PAY ATTENTION TO DOING THAT. SO PLEASE, WOULD EVERYBODY MAKE A CONSCIOUS EFFORT TO DO THAT.
AND I'M GOING TO ASK HER IF THAT DOESN'T HAPPEN, JUST TO FEEL FREE TO INTERRUPT YOU, AND SAY "WE HAVE GOT TO SLOW DOWN," BECAUSE SHE'S THE ONLY ONE THAT KNOWS WHAT SHE IS GETTING, WHAT SHE IS NOT.
LET'S TAKE THIS SERIOUSLY. I MENTIONED IT TO YOU AND SHE HAS FROM TIME TO TIME. BUT I'M TAKING TIME OUT NOW TO MAKE A POINT ABOUT IT IN A REPETITIOUS WAY, WITH THE HOPE THAT IT'S GOING TO SINK IN. OKAY.
WE ARE READY TO PROCEED TODAY, AND WE HAVE DR. SMITH BACK ON THE STAND.

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MR. ROSSE, I THINK YOU WERE CROSS-EXAMINING DR. SMITH.
MR. ROSSE: THANK YOU.
FURTHER TESTIMONY OF
ALLAN SMITH, M.D.,
A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:

CROSS-EXAMINATION (RESUMED)
BY MR. ROSSE: Q. DR. SMITH, WE WERE TALKING ABOUT A REPORT AND A DEPOSITION TRANSCRIPT BY DR. HAMMAR THAT WAS IN YOUR FILE; CORRECT?
MR. BROWN: YOUR HONOR, I THINK THERE WAS A RULING ON THAT.
THE COURT: I DIDN'T HEAR THE QUESTION.
MR. BROWN: A QUESTION ABOUT HAMMAR.
THE COURT: I THINK WE TOOK CARE OF THAT.
IF YOU WANT TO HAVE A SIDEBAR, WE CAN, BUT I THINK WE TOOK CARE OF THIS.
MR. ROSSE: ACTUALLY, I DO, YOUR HONOR. MAYBE I MISUNDERSTOOD.
THE COURT: MAYBE YOU DID.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: OKAY. WE'RE BACK ON THE RECORD.
MR. ROSSE.
MR. ROSSE: I WILL WITHDRAW THE LAST QUESTION.
THE COURT: ALL RIGHT.

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MR. ROSSE: Q. DOCTOR, DID YOU REVIEW MEDICAL RECORDS IN THIS CASE?
A. I REVIEWED MEDICAL REPORTS AND SOME MEDICAL RECORDS, YES.
Q. DID YOU CONSIDER THOSE REPORTS AND MEDICAL RECORDS IN FORMING YOUR OPINION IN THIS CASE?
A. SOME, YES.
Q. DOCTOR, WOULD YOU AGREE WITH ME THERE'S AT LEAST SOME DISPUTE WITHIN THE MEDICAL COMMUNITY ON WHETHER OR NOT ASBESTOSIS IS REQUIRED AS A PRECURSOR IN FINDING ASBESTOS TO BE A CAUSE OF LUNG CANCER?
A. I'M NOT SURE HOW TO ANSWER THAT QUESTION. IT IS TRUE, IN THE PAST, THERE HAVE BEEN SOME ARTICLES DISPUTING WHAT YOU SAID.
RIGHT NOW, I WOULD THINK THE EVIDENCE IS PRETTY

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CLEAR, AND WHAT SOME OF THOSE PEOPLE WHO ONCE SAID YOU HAD TO HAVE ASBESTOSIS WOULD THINK NOW, I DON'T KNOW.

Q. AT LEAST IN THE PAST, THERE WERE SOME PEOPLE THAT BELIEVED THAT?

A. CORRECT.

Q. AND YOU ARE NOT SURE WHETHER THEY STILL BELIEVE THAT OR NOT?

A. I DON'T KNOW.

Q. NOW, EARLIER, YOU SAID THAT ASBESTOSIS IS ONLY CAUSED BY ASBESTOS EXPOSURE?

A. CORRECT.

Q. WHAT IS ASBESTOSIS?

A. YOU CAN DEFINE THAT VERY SIMPLY. IT'S A DISEASE

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OF THE LUNG THAT'S CAUSED BY ASBESTOS EXPOSURE. IT'S NOT A CANCER. IT INVOLVES VARIOUS OF THE TISSUES AND THE CELLS IN THE LUNG THAT RESULTS IN PROBLEMS WITH BREATHING.

Q. IT'S FIBROSIS?

A. IT INCLUDES FIBROSIS, YES.

Q. FIBROSIS IS NOT THAT UNCOMMON IN HUMAN LUNGS?

A. ASBESTOSIS IS EXTREMELY UNCOMMON. THAT TYPE OF FIBROSIS IS VERY RARE.

BUT IF YOU SAID: "DOES SOME FIBROSIS OCCUR IN SOME LUNGS," THEN ONE ALSO HAS TO ADD IN A LOT OF OTHER CONDITIONS, LIKE SILICOSIS, PNEUMOCONIOSIS.

THEN IF YOU EVER GET AN INJURY TO YOUR LUNG IN SOME FORM OR OTHER, SCAR WILL FORM THERE.

SO THERE ARE -- THE PRESENCE OF SCAR TISSUE IN LUNGS IS FAIRLY FREQUENT.

Q. AND IT'S CALLED FIBROSIS WHEN IT'S IN THE LUNG?

A. IT'S INTERSTITIAL PULMONARY FIBROSIS IF IT'S IN THE LUNG.

Q. AND THAT'S NOT THAT UNCOMMON IN HUMANS?

A. IT IS. IT'S NOT THAT COMMON TO HAVE ASBESTOSIS.

WHEN YOU GET INTERSTITIAL PULMONARY FIBROSIS DUE TO ASBESTOS, THEN THAT'S VERY RARE.

Q. DOCTOR, I WAS ASKING YOU IF INTERSTITIAL PULMONARY FIBROSIS, THAT'S UNCOMMON, NOT ASBESTOSIS.

A. IN MY OPINION, IF YOU HAVE A DIAGNOSIS OF INTERSTITIAL PULMONARY FIBROSIS IN THE LUNGS IN PATIENTS IS QUITE UNCOMMON.

Q. UNCOMMON?

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A. IT IS.

Q. THE INTERSTIAL FIBROSIS IS CALLED ASBESTOSIS WHEN IT'S ASSOCIATED WITH ASBESTOS AS A CAUSE?

A. WHEN ASBESTOS CAUSED IT, YES.

Q. BUT YOU CAN HAVE THE SAME SCARRING APPEARING IN YOUR LUNGS WITH OTHER CAUSES?

A. NO, NOT REALLY. THERE IS A VERY RARE CONDITION CALLED INTERSTITIAL PULMONARY FIBROSIS, WHICH BASICALLY IS OF UNKNOWN CAUSE. THAT'S VERY RARE. ASBESTOSIS IS MORE COMMON THAN THAT.

YOU CAN HAVE ALSO OTHER DISEASES, LIKE SILICOSIS I MENTIONED, WHICH CAUSE FIBROSIS, BUT THESE AREN'T COMMON.

ASBESTOSIS IS FAIRLY COMMON IN ASBESTOS WORKERS, BUT NOT IN THE GENERAL POPULATION. AND OTHER -- THESE OTHER TYPES OF DISEASE LABELED INTERSTITIAL PULMONARY FIBROSIS ARE EVEN RARER STILL.

Q. NOW, IF YOU SAW ASBESTOSIS IN A CASE OF LUNG CANCER, YOU WOULD SAY THAT DEFINITELY SHOWS THAT THE LUNG CANCER WAS CAUSED BY THE ASBESTOS; CORRECT?

A. NO, I WOULDN'T WORD IT THAT WAY.

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I'D SAY IF THERE WAS ASBESTOSIS, THERE WAS LUNG CANCER.

THE ASBESTOSIS PROVIDES ADDITIONAL EVIDENCE, ALONG WITH THE WORK HISTORY, THAT THE LUNG CANCER WAS CAUSED BY ASBESTOS.

IT WOULD MEAN IN ALL PATIENTS WHO FIRST GET ASBESTOSIS AND WHO LATER GET LUNG CANCER THAT THE ASBESTOS WOULD BE INVOLVED, THOUGH, IN CAUSATION OF THE LUNG CANCER.

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Q. YOU WOULD AGREE THAT THE PRESENCE OF ASBESTOSIS, WHETHER OR NOT IT'S A CAUSE OF LUNG CANCER, THE MERE PRESENCE OF ASBESTOSIS SHOWS ENOUGH EXPOSURE TO BELIEVE THAT LUNG CANCER WAS CAUSED BY THAT AMOUNT OF EXPOSURE?

A. YES. I'VE ALWAYS WANTED TO FIND OUT ABOUT A WORK HISTORY, WHAT THE EXPOSURE WAS, BECAUSE IT'S SUSPECTED IN EVERY CASE WHEN WE END UP CONCLUDING ASBESTOS WAS INVOLVED IN THE CAUSATION OF SUCH A LUNG CANCER.

Q. YOU WOULD AGREE, SOME EXPERTS HAVE WRITTEN THEY DON'T BELIEVE ASBESTOSIS IS A CAUSE, BUT THEY BELIEVE THAT THE LEVEL OF EXPOSURE IT TAKES TO FIND ASBESTOSIS --

MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO SOME UNSPECIFIED REFERENCE TO SOME EXPERTS. I DON'T THINK THAT'S PROPER.

THE COURT: ARE YOU ASKING ABOUT THE LITERATURE?

MR. ROSSE: YES, YOUR HONOR.

THE COURT: DO YOU WANT TO -- I THINK HIS OBJECTION IS THAT IT'S VAGUE, WHAT YOU MEAN BY "SOME EXPERTS."

WHY DON'T YOU REPHRASE THE QUESTION.

MR. ROSSE: Q. YOU WOULD AGREE THAT SOME MEDICAL RESEARCHERS THAT HAVE WRITTEN ARTICLES THAT HAVE OPINED THAT IT'S THE LEVEL OF EXPOSURE THAT CAUSES ASBESTOSIS THAT THEY WOULD LOOK FOR BEFORE LINKING LUNG CANCER TO ASBESTOS?

A. I THINK I HAVE SEEN THAT MENTIONED IN THE LITERATURE, YES.

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Q. NOW, YOU DIDN'T SEE ANY INDICATION OF ANY ASBESTOSIS IN THE PLAINTIFF IN THIS CASE, DID YOU?

A. CORRECT.

Q. DID YOU SEE ANY INDICATION THAT MR. WHITTEKER HAD ASBESTOSIS?

A. NO.

Q. DID YOU SEE ANY INDICATION THAT THE PLAINTIFF IN THIS CASE HAD PLEURAL PLAQUES?

A. NO.

Q. PLEURAL PLAQUES ARE ALSO ASSOCIATED WITH ASBESTOS EXPOSURE; CORRECT?

A. THEY CAN BE CAUSED BY ASBESTOS, YES.

Q. AND GENERALLY, IN THE LITERATURE, IT'S BELIEVED THAT PLEURAL PLAQUES HAVE A LOWER LEVEL OF EXPOSURE CAUSATION THAN DOES ASBESTOSIS?

A. WHEN YOU SAY "GENERALLY IT'S BELIEVED IN THE LITERATURE," NO.

THERE HAVE BEEN STATED VIEWS THAT PLEURAL PLAQUES MAY OCCUR AT LOWER LEVELS OF EXPOSURE THAN ASBESTOSIS. BUT IN MY OPINION, THERE'S DOSE/RESPONSE RELATIONSHIPS FOR BOTH THAT SPAN A WIDE RANGE.

AND I DON'T AGREE WITH THAT, AND I DON'T THINK I WOULD SAY IT'S GENERALLY BELIEVED IN THE LITERATURE.

Q. DOCTOR, THERE IS NO INDICATION THAT THE PLAINTIFF SUFFERED FROM PLEURAL PLAQUES IN THIS CASE; CORRECT?

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A. CORRECT.
Q. THERE IS NO INDICATION THAT MR. WHITTEKER HAS PLEURAL PLAQUES IN THIS CASE; CORRECT?

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A. I DON'T KNOW, BUT I DON'T HAVE ANY EVIDENCE HE HAS PLEURAL PLAQUES OR DOESN'T HAVE IT.
Q. THE PRESENCE OF ANY OF THESE DISEASES IN THE FATHER OR ANY OF THE FAMILY MEMBERS WOULD INDICATE TO AN EPIDEMIOLOGIST THAT THERE IS A HIGH LEVEL OF EXPOSURE TO ASBESTOS; CORRECT?
A. I WOULD WORD IT, THERE IS A SIGNIFICANT OCCUPATIONAL EXPOSURE TO ASBESTOS. SOME CASES OF ASBESTOSIS OCCUR IN HOUSEHOLD SETTINGS, FROM EXPOSURE TO FAMILY MEMBERS.
FOR EXAMPLE, THEY CAN OCCUR AT QUITE LOW LEVELS OF EXPOSURE. THEY'RE RARE AT LOW LEVELS OF EXPOSURE.
Q. AND OFTEN, THE LOW LEVELS OF EXPOSURE WHICH YOU BELIEVE ARE ASBESTOSIS ARE DISPUTED BY OTHER PEOPLE, AREN'T THEY?
A. I DON'T KNOW WHAT YOU MEAN BY THAT.
Q. YOU OFTEN TESTIFY IN LAWSUITS THAT YOU BELIEVE IT'S ASBESTOSIS, AND OTHER PEOPLE YOU KNOW OPINE THAT IT'S NOT?
MR. BROWN: OBJECTION. CALLS FOR HEARSAY.
THE COURT: SUSTAINED.
MR. ROSSE: Q. YOU ARE AWARE THAT, WITHIN THE MEDICAL COMMUNITY, THERE ARE SOMETIMES DISPUTES AS TO THE CAUSE OF PULMONARY FIBROSIS IN PATIENTS?
A. THE CAUSE OF WHAT?
Q. PULMONARY FIBROSIS IN PATIENTS.
A. WELL, NOT -- I'M AWARE THAT SOMETIMES THE PULMONOLOGISTS OR THE RADIOLOGISTS OR THE PATHOLOGISTS

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AREN'T SURE OF SOMETHING. I'M AWARE THAT THERE MAY BE DISAGREEMENT.
Q. LET ME SEE IF I HAVE THIS STRAIGHT, DOCTOR.
YOU WOULD AGREE THAT THERE ARE NO EPIDEMIOLOGY STUDIES WHICH YOU'RE AWARE OF WHICH CONCLUDE WITHIN THE STUDY THAT NONOCCUPATIONAL EXPOSURE TO ASBESTOS IS A CAUSE OF LUNG CANCER?
A. THAT'S CORRECT. THAT STATEMENT DOES NOT APPEAR IN ANY ARTICLE IN THOSE STUDIES THAT I KNOW OF.
Q. YOU ARE NOT AWARE OF THAT STATEMENT APPEARING IN ANY MEDICAL ARTICLE?
A. I WOULDN'T SAY THAT, NO. I WOULD SAY, IN THE STUDIES THAT WE TALKED ABOUT, THOSE PHRASES AREN'T THERE.
Q. YOU ARE NOT TELLING US THAT THE STUDIES THAT WE TALKED ABOUT, THAT THOSE AUTHORS DON'T KNOW WHAT THEY'RE DOING?
A. I CAN'T -- I DON'T KNOW IF YOU'RE JOKING. I'M SORRY. I THOUGHT THAT WAS RATHER FUNNY.
Q. I'M NOT JOKING.
A. WHEN WE WRITE ARTICLES, WE DON'T PUT EVERY SINGLE STATEMENT IN THE ARTICLE. THE FACT THAT AUTHORS DON'T PUT CERTAIN STATEMENTS IN THE ARTICLE DOESN'T MEAN TO SAY THEY DON'T KNOW WHAT THEY'RE DOING.
Q. I'M A LITTLE UNCLEAR ON WHAT YOU BELIEVE THE LEVEL OF EXPOSURE IS IN THIS CASE.
IS THAT BASED ON DEPOSITIONS? IS THAT BASED ON A HYPOTHETICAL? WHAT ARE YOU BASING YOUR OPINION ON CAUSATION ON IN THIS CASE, AS FAR AS THE EXPOSURE?

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A. WELL, I THOUGHT WE WENT -- CAN I ANSWER AGAIN?

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IN THE WORLD LITERATURE --
Q. ACTUALLY --
A. CAN I -- ARE YOU ASKING ME A QUESTION?
Q. I WANT TO CLARIFY IT, ACTUALLY.
A. I STARTED ANSWERING IT.
THE COURT: JUST A SECOND. IF YOU WANT TO CLARIFY, LET HIM CLARIFY THE QUESTION.
MR. ROSSE: Q. I WAS ASKING FOR THE SOURCE OF YOUR INFORMATION.
A. I'M STARTING TO EXPLAIN IT, COUNSEL.
Q. OKAY.
A. IN THE SCIENTIFIC LITERATURE, THERE'S MANY STUDIES ON PLUMBERS AND PIPEFITTERS SHOWING ASBESTOS DISEASE AND EXTENSIVE EXPOSURE. IT'S ONE OF THE MAIN OCCUPATIONAL GROUPS GETTING THE ASBESTOS-CAUSED MESOTHELIOMAS RIGHT NOW.
IN A MAJOR STUDY, FOR EXAMPLE, IN ENGLAND, IT'S THE THIRD MOST COMMON OCCUPATIONAL GROUP TO GET ASBESTOS-CAUSED MESOTHELIOMAS. THAT'S ONE PAPER, THE IMPORTANT OCCUPATIONAL EXPOSURE.
SECONDLY, SHIPYARD WORK IS WIDELY DESCRIBED IN THE LITERATURE AS A MAJOR SOURCE OF ASBESTOS EXPOSURE.
Q. AND THOSE TWO OCCUPATIONS ARE VERY IMPORTANT?
A. THERE ARE STUDY AFTER STUDY SHOWING THAT HOUSEHOLD MEMBERS ARE AT RISK OF ASBESTOSIS AND MESOTHELIOMAS, ASBESTOS-RELATED CONDITIONS. NO QUESTION ABOUT IT.
AS I POINTED OUT, IT'S HARDER FOR LUNG CANCER,

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BECAUSE IN CONTRAST TO ASBESTOSIS, WHICH IS ALWAYS CAUSED BY ASBESTOS, AND MESOTHELIOMA, WHICH NEARLY ALWAYS IS, LUNG CANCER HAS MANY OTHER CAUSES, OF WHICH SMOKING, OF COURSE, IS THE MAIN ONE.
IT'S MUCH HARDER IN STUDIES, SINGLE STUDIES OR IN GROUPS OF STUDIES EVEN, TO PROVE THAT LUNG CANCER RATES ARE INCREASED IN HOUSEHOLD MEMBERS AND THERE ARE NOT ENOUGH STUDIES ON THAT POINT TO PROVE IT.
BUT IF I LOOK AT THE OVERALL SCIENTIFIC EVIDENCE LIKE THAT, I END UP SAYING IT'S MORE LIKELY THAN NOT, WHEN YOU HAVE AN AGENT THAT'S SYNERGISTIC WITH SMOKING IN A TEENAGER THAT STARTED SMOKING, THAT THEY ACT JOINTLY IN CAUSING A LUNG CANCER.
Q. SO THE SOURCE OF YOUR INFORMATION FOR THIS CASE IS STUDIES THAT YOU'VE READ?
A. IT INCLUDES THE SCIENTIFIC STUDIES, YES, COUNSEL.
Q. IS THERE ANY SOURCE OTHER THAN A SCIENTIFIC STUDY?
A. WELL, YES. THERE IS INFORMATION THAT I HAVE THAT I UNDERSTAND HAS BEEN GIVEN IN COURT BY OTHERS.
I HAVE AN UNDERSTANDING OF THE WORK HISTORIES THAT RELATED TO THE FATHER AND THE HUSBAND. I HAVE AN UNDERSTANDING OF HER HISTORY WHEN SHE STARTED SMOKING, BASED ON MATERIAL SENT TO ME.
I'M NOT TESTIFYING TO THAT. OTHERS ARE PRESENTING THAT IN COURT.
Q. YOU ARE AWARE THAT NONE OF THE TREATING DOCTORS IN THIS CASE HAVE OPINED THAT ASBESTOS IS A CAUSE OF THE

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LUNG CANCER?
A. I DON'T KNOW.
Q. YOU ARE AWARE THAT DR. HORN --
MR. BROWN: ASKED AND ANSWERED. WE WENT OVER THIS.
THE COURT: GO AHEAD. I'LL ALLOW IT.

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MR. ROSSE: Q. YOU ARE AWARE THAT DR. HORN OPINED HE WOULD NOT FIND THAT ASBESTOS WAS, MORE LIKELY THAN NOT, A CAUSE OF THE LUNG CANCER IN THIS CASE?

A. I DON'T KNOW IF HE HAS TESTIFIED. I DON'T KNOW WHAT HE SAID IN COURT.

I WAS AWARE THAT HE WASN'T SURE -- AT LEAST MY RECOLLECTION IS THAT HE WASN'T SURE IF ASBESTOS WAS OR WAS NOT INVOLVED, BUT THAT'S ALL I CAN SAY.

Q. BASED ON YOUR ARTICLES, YOUR REVIEW OF THE MEDICAL TREATING DOCTORS, DR. HORN'S OPINION, IN LIGHT OF ALL OF THAT, YOUR OPINION IS THAT IT'S TO A REASONABLE DEGREE OF MEDICAL PROBABILITY PLAINTIFF'S LUNG CANCER WAS CAUSED BY ASBESTOS?

A. MORE LIKELY THAN NOT, IT CONTRIBUTED TO CAUSATION, ALONG WITH THE CIGARETTE SMOKING, IN MY VIEW.

MR. ROSSE: THANK YOU, DOCTOR.

THE COURT: OKAY. WHO IS NEXT? MR. FURR?

MR. FURR: YES.

CROSS-EXAMINATION

BY MR. FURR: Q. GOOD MORNING, DR. SMITH.

A. GOOD MORNING.

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Q. MY NAME IS JEFF FURR.

YOU AND I MET IN EARLY DECEMBER WHEN I TOOK YOUR DEPOSITION; CORRECT, SIR?

A. WAS IT EARLY DECEMBER? YES, I THINK SO.

Q. YES. WHEN MR. ROSSE BEGAN CROSS-EXAMINING YOU YESTERDAY, YOU MENTIONED THAT YOU HAD IN FACT TESTIFIED A LARGE NUMBER OF TIMES PREVIOUSLY IN COURT, HAVEN'T YOU, SIR?

A. YES.

Q. IN FACT, YOU ESTIMATED IN THE PAST, THAT YOU'VE TESTIFIED OVER 100 TIMES, HAVEN'T YOU, SIR?

A. YES.

Q. AND YOU HAVE TESTIFIED IN THE PAST FOR MS. CHABER'S LAW FIRM, HAVEN'T YOU?

A. YES.

Q. YOU'VE TESTIFIED IN THE PAST FOR HER LAW FIRM IN ASBESTOS CASES, HAVEN'T YOU, SIR?

A. CORRECT.

Q. AND YOU'VE TESTIFIED IN THE PAST FOR HER LAW FIRM IN TOBACCO CASES, HAVEN'T YOU, SIR?

A. IN ONE, YES.

Q. YES. DO YOU STILL CHARGE $350 AN HOUR FOR YOUR WORK ON LEGAL CASES?

A. IT'S $400 AN HOUR NOW.

Q. IT'S 400 NOW.

AND SIR, ARE YOU STILL DERIVING ABOUT A THIRD OF YOUR INCOME FROM WORKING ON LEGAL CASES?

A. YES.

Q. I WASN'T CLEAR ABOUT SOMETHING YESTERDAY. YOU

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TOLD MR. ROSSE THAT YOU DON'T TREAT PATIENTS.

BUT AM I CORRECT, SIR, THAT YOU HAVEN'T ACTUALLY TREATED CANCER PATIENTS FOR ABOUT 30 YEARS?

A. MY ACTUAL TREATMENT RESPONSIBILITY WOULD DATE BACK TO 1971.

Q. 29 YEARS?

A. 29.

Q. AND YOU NEVER MET MRS. WHITELEY, DID YOU, SIR?

A. CORRECT.

Q. YOU WEREN'T INVOLVED IN HER MEDICAL CARE OR CONSULTED BY HER PHYSICIANS IN ANY WAY, WERE YOU?

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A. CORRECT.
Q. DURING YOUR DIRECT EXAMINATION, YOU TALKED ABOUT TOBACCO AND ASBESTOS AND MARIJUANA WITH RESPECT TO FACTORS THAT MAY HAVE BEEN INVOLVED IN MRS. WHITELEY'S LUNG CANCER; CORRECT, SIR?
A. CORRECT.
Q. NOW, THERE IS NO MEDICAL TEST THAT YOU OR ANYONE COULD CONDUCT ON TISSUE TAKEN FROM HER LUNG CANCER TO DETERMINE WHICH OF THOSE FACTORS WAS INVOLVED AND TO WHAT EXTENT THOSE FACTORS WERE INVOLVED; IS THAT CORRECT?
A. CORRECT.
Q. LET ME ASK YOU SOME QUESTIONS ABOUT THIS CHART UP HERE.
I'M LOOKING AT WHAT WAS MARKED AS PLAINTIFFS' EXHIBIT 1917.
THAT'S A CHART THAT YOU DREW, ISN'T IT, SIR?
A. YES.

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Q. AND YOU DREW THAT CHART TO ILLUSTRATE WHAT YOU DESCRIBED AS THE SYNERGISTIC REACTION BETWEEN SMOKING AND ASBESTOS EXPOSURE; IS THAT CORRECT?
A. CORRECT.
Q. AND I BELIEVE YOU TOLD US THAT THERE WERE A NUMBER OF STUDIES, APPROXIMATELY 10 TO 12 OR SO, THAT YOU BELIEVED DEMONSTRATED THE SYNERGISTIC REACTION BETWEEN SMOKING AND ASBESTOS EXPOSURE; IS THAT CORRECT?
A. NOT QUITE. CONSIDERED OVERALL. DEMONSTRATED INDIVIDUALLY, SOME OF THE STUDIES ARE INCONCLUSIVE.
WHEN ONE LOOKS AT THE OVERALL, IT'S A CLEAR SITUATION.
Q. THE STUDIES THAT YOU'RE REFERRING TO AND THAT YOU RELIED UPON IN DEVELOPING THIS CHART WERE STUDIES IN WHICH THE ASBESTOS EXPOSURE HAD BEEN AN OCCUPATIONAL EXPOSURE; IS THAT CORRECT, SIR?
A. CORRECT.
Q. NOW, AS YOU AND MR. ROSSE TALKED ABOUT AT SOME LENGTH, THAT'S NOT THE TYPE OF EXPOSURE THAT MRS. WHITELEY HAD, IS IT, SIR?
A. CORRECT.
Q. MRS. WHITELEY HAD A NONOCCUPATIONAL OR PARAOCCUPATIONAL EXPOSURE?
A. CORRECT.
Q. AM I CORRECT, DOCTOR, THERE ARE NO STUDIES THAT ARE PUBLISHED THAT DEMONSTRATE THIS TYPE OF SYNERGISTIC REACTION BETWEEN NONOCCUPATIONAL ASBESTOS EXPOSURE AND CIGARETTE SMOKING?

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A. CORRECT. THERE ARE NO STUDIES THAT HAVE ADDRESSED THAT TOPIC.
Q. JUST A FEW MORE QUESTIONS, DR. SMITH.
AM I CORRECT, SIR, THAT IT IS YOUR OPINION THAT ADULTS IN THE UNITED STATES SHOULD NOT BE FREE TO CHOOSE TO SMOKE CIGARETTES?
A. CORRECT.
Q. AM I CORRECT, SIR, THAT YOU WOULD LIKE TO SEE THE COMPANIES THAT MANUFACTURE AND SELL CIGARETTES PUT OUT OF BUSINESS?
A. CORRECT.
Q. AND AM I CORRECT, SIR, THAT YOU WOULD LIKE TO SEE THE COMPANIES THAT MANUFACTURE AND SELL CIGARETTES PUT OUT OF BUSINESS BY LAWSUITS LIKE THIS ONE?
A. CORRECT.
CAN I EXPLAIN MY ANSWER?

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Q. IF MR. BROWN WANTS YOU TO EXPLAIN YOUR ANSWER, WE'LL TALK ABOUT THAT.
AND AM I CORRECT, SIR, THAT ONE OF THE REASONS THAT YOU GET INVOLVED IN LAWSUITS LIKE THIS ONE IS BECAUSE YOU HOPE THAT THESE TYPE OF LAWSUITS MIGHT RESULT IN THE TOBACCO MANUFACTURERS BEING BANKRUPTED BY THE VERDICTS?
A. CORRECT. AND CAN I EXPLAIN MY ANSWER?
MR. FURR: IF MR. BROWN WANTS YOU TO, WE'LL TALK IT ABOUT, SIR.
THANK YOU VERY MUCH.
MR. BROWN: I GUESS WE NEED TO TALK ABOUT IT

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REDIRECT EXAMINATION
BY MR. BROWN: Q. LET ME ASK YOU: WHY DO YOU FEEL THAT WAY?
MR. FURR: OBJECTION. RELEVANCE. 352.
THE COURT: I'M PROBABLY GOING TO SUSTAIN THAT. IF YOU WANT TO HAVE A SIDEBAR WITH ME, YOU CAN.
THAT'S A VERY OPEN-ENDED QUESTION. I DON'T KNOW WHAT THE WITNESS IS GOING TO SAY.
SO MY TEMPTATION WOULD BE TO SUSTAIN. IF YOU WANT TO HAVE A SIDEBAR AND EXPLAIN TO ME WHAT THIS WITNESS IS GOING TO SAY OR WHAT YOU THINK, OR TALK TO HIM ABOUT IT, I'LL CONSIDER IT THEN.
IN THE ABSTRACT, I'M GOING TO SUSTAIN, BECAUSE I DON'T KNOW.
MR. BROWN: I BETTER MOVE FROM THE ABSTRACT.
THE COURT: IF YOU WANT TO BE MORE SPECIFIC, THAT'S ANOTHER WAY OF DOING IT.
MR. BROWN: Q. YOU WERE ASKED THOSE QUESTIONS IN YOUR DEPOSITION BY MR. FURR; RIGHT?
A. I WAS.
Q. AND YOU EXPLAINED TO HIM WHY IN THE DEPOSITION, DIDN'T YOU?
A. I DID.
Q. I WILL JUST LEAVE IT THERE.
JUST A COUPLE OF THINGS. OH, SOMETHING ELSE MR. FURR ASKED YOU ABOUT.
YOU DIDN'T SEE LESLIE WHITELEY AND YOU DON'T TREAT PATIENTS.

2921

WHEN EPIDEMIOLOGISTS DO STUDIES AND REVIEWS AND PREPARE FOR CASES LIKE THIS, DO THEY EVER SEE THE PATIENTS OR SEE THE PLAINTIFFS?
A. NO.
Q. DO EPIDEMIOLOGISTS TREAT PATIENTS?
A. NO.
Q. YOU WERE ASKED, I THINK BY MR. ROSSE, WHETHER TROY WHITTEKER HAD PLEURAL PLAQUES, ASBESTOSIS.
LET ME ASK YOU THIS: IN TERMS OF YOUR OPINION, IS IT SIGNIFICANT -- IS IT SIGNIFICANT THAT OTHER FAMILY MEMBERS DON'T HAVE APPARENTLY SOME ASBESTOS DISEASE?
A. NO.
Q. WHY NOT?
A. BECAUSE THE QUESTION IS WHETHER OR NOT THERE'S ASBESTOS EXPOSURE IN THE HOME, NOT WHETHER OR NOT THE FATHER GOT ASBESTOS DISEASE. IT DOESN'T IMPACT ON THE RISK TO THE FAMILY MEMBER, UNLESS IT MEANS THERE WAS A MUCH HIGHER EXPOSURE.
BUT SOME WORKERS GET ASBESTOSIS, SOME DON'T, AT ALL LEVELS OF EXPOSURE.
SO IT'S NOT AN OVERRIDING FACTOR AT ALL. IN

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FACT, IT'S NOT EVEN IMPORTANT HERE, CONSIDERING THE DISEASE IN THE DAUGHTER.

Q. WOULD INSULATORS WORKING IN SHIPYARDS AND PERHAPS POWER PLANTS BE THE MOST HEAVILY EXPOSED OCCUPATIONAL WORKERS?

IF THERE'S SOMEBODY ELSE, TELL ME WHO THEY ARE.

A. WELL, IN THAT SETTING, THE HIGHEST EXPOSURE

2922

OCCURS -- ACTUALLY, THE HIGHER AIR LEVELS OCCUR FROM SWEEPING AND CLEANING UP.

SOMETIMES, THERE ARE OTHER PEOPLE THAT DO THAT CLEANING UP OTHER THAN THE INSULATORS. THEY WOULD HAVE HIGH-INTENSITY EXPOSURES. IT REALLY DEPENDS ON THE JOB ACTIVITY AND WHAT'S BEING DONE AND HOW MUCH DUST IS IN THE AIR.

AND AS A TOTAL GROUP, INSULATORS IN THE PAST HAVE HAD WIDESPREAD HIGH-INTENSITY EXPOSURE, BUT I WOULDN'T PICK THEM OUT AND SAY THEY WERE THE HIGHEST.

Q. OKAY. LET ME FRAME THE QUESTION THIS WAY THEN: AMONG THOSE, WHOEVER THEY MIGHT BE, WHO HAVE THE HIGHEST OCCUPATIONAL EXPOSURE, THE VERY HIGHEST, DO THEY ALL GET ASBESTOSIS?

A. NO.

Q. DO THEY ALL GET PLEURAS PLAQUES?

A. NO.

Q. DO THEY ALL GET LUNG CANCER?

A. NO.

Q. NOW, THERE'S A LATENCY IN ASBESTOS DISEASE; RIGHT?

A. CORRECT.

Q. WHAT IS THAT?

A. MOST CASES DON'T APPEAR UNTIL MORE THAN 20 YEARS AFTER THE FIRST EXPOSURE. THEY CAN OCCUR SOONER, BUT USUALLY, IT'S MORE THAN 20 YEARS AFTER.

Q. IS IT UNCOMMON FOR PEOPLE HEAVILY EXPOSED IN SHIPYARDS OR WHEREVER IN THEIR 20S, 30S, SOMETIMES 40S, NOT

2923

TO DEVELOP AN ASBESTOS DISEASE UNTIL THEY'RE IN THEIR 80S? IS THAT CORRECT?

A. I'M SORRY. LET ME MAKE SURE.

SOMETIMES IT'S A VERY LONG LATENCY AND THE ASBESTOS DISEASE DOESN'T DEVELOP UNTIL A MUCH OLDER AGE.

I DON'T KNOW OF STUDIES THAT HAVE SPECIFICALLY LOOKED AT THE 80-YEAR-OLD GROUP.

Q. OKAY.

A. 60 YEARS OLD AND 70 YEARS OLD.

Q. I GUESS -- LET ME ASK THIS: IS TROY WHITTEKER AT AN AGE WHERE HE CAN RELAX? IF HE HASN'T GOT IT BY NOW, HE'S NEVER GOING TO GET IT?

A. NO.

Q. YOU WERE ASKED YESTERDAY ABOUT AN ARTICLE, I THINK IT WAS IN THE NEW ENGLAND JOURNAL OF MEDICINE. IT WAS MARKED IN EVIDENCE -- NOT IN EVIDENCE, BUT FOR IDENTIFICATION. I DON'T SEEM TO HAVE IT HANDY HERE FOR SOME REASON.

THERE WE GO. MARKED AS DEFENSE EXHIBIT 8001.

DO YOU HAVE THAT UP THERE? IT'S THE ONE THAT'S BY CAMUS.

A. THE FIRST AUTHOR. OKAY.

Q. LET ME GIVE YOU THIS, SO YOU DON'T HAVE TO LOOK FOR IT.

A. OKAY.

Q. WAS THERE AN EDITORIAL PUBLISHED WITH THAT

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ARTICLE IN THAT JOURNAL?
A. YES.

Q. AND DID THAT EDITORIAL REFLECT YOUR ANALYSIS -- YOUR VIEW OF HOW THE ARTICLE OUGHT TO BE INTERPRETED AND READ?
A. YES. I THINK THERE'S SOME KEY POINTS IN THE EDITORIAL, WHICH I CERTAINLY AGREE WITH.
MR. BROWN: ALL RIGHT. AND I HAVE HERE A COPY OF THE EDITORIAL.
I'D LIKE TO MARK THIS AS IN NEXT IN EVIDENCE.
THE COURT: NEXT IN ORDER FOR IDENTIFICATION, YOU MEAN?
MR. BROWN: YES. I AM NOT TRYING TO SNEAK THIS INTO EVIDENCE. I MISSPOKE.
THE CLERK: PLAINTIFFS' EXHIBIT 1919.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1919)
MR. BROWN: I'LL JUST HAND THIS UP, YOUR HONOR.
THE COURT: SURE. THANKS.
MR. BROWN: Q. WHAT IS THE PORTION OF THIS EDITORIAL THAT REFLECTED YOUR OPINION?
A. I THINK YOU HAVE MY COPY.
Q. DO I?
A. THERE'S ONE WITH SOME BLUE HIGHLIGHTING ON IT.
Q. ON THE FIRST PAGE?
MS. CHABER: HERE.
THE WITNESS: IT'S OVER THERE (INDICATING).
MR. BROWN: (TO MS. CHABER:) WHAT WOULD I DO WITHOUT YOU?
Q. THE QUESTION IS: COULD YOU POINT OUT TO US WHERE IN THIS EDITORIAL THE PERSON WHO WROTE THE EDITORIAL REFLECTS YOUR VIEWS?
MR. ROSSE: OBJECTION, YOUR HONOR. HEARSAY.
MR. BROWN: THIS IS ALL PART OF THE SAME ARTICLE HE MARKED. THIS WAS PUBLISHED RIGHT WITH IT. IT DEALT WITH THE ARTICLE THAT WAS MARKED BY MR. ROSSE.
MR. ROSSE: IT'S NOT PART OF THE ARTICLE.
THE COURT: IS IT YOUR TESTIMONY THAT THIS IS NOT PART OF -- IS IT CORRECT, THIS IS NOT PART OF THE SAME ARTICLE? RIGHT?
THE WITNESS: CORRECT, YOUR HONOR. IT'S PUBLISHED AT THE SAME TIME IN THE SAME JOURNAL AS A DIRECT COMMENTARY ON THE ARTICLE.
THE COURT: YOU ANSWERED MY QUESTION.
YOU OBJECT TO THIS ON THE GROUNDS THAT IT'S NOT THE SAME ARTICLE?
MR. ROSSE: IT'S HEARSAY. IT'S NOT THE SAME ARTICLE.
THE COURT: I THINK THAT'S CORRECT. I THINK I'M GOING TO SUSTAIN IT.
MR. BROWN: ALL RIGHT. LET'S GO BACK TO THE ARTICLE ITSELF.
Q. I GUESS THERE WAS A PORTION OF THAT ARTICLE THAT WAS READ TO YOU, AND I THINK IT MIGHT BE HIGHLIGHTED HERE ON THE FRONT PAGE.
DO YOU SEE THAT YELLOW HIGHLIGHTING DOWN THERE IN THE LOWER LEFT?
A. YES.

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Q. THAT WAS READ TO YOU BY MR. ROSSE.
WOULD YOU READ THAT AGAIN.
A. IT SAYS: "WE FOUND NO MEASURABLE EXCESS RISK OF DEATH DUE TO LUNG CANCER AMONG WOMEN IN TWO CHRYSOTILE-ASBESTOS-MINING REGIONS."
Q. AND IN VIEW OF THE FACTS AND THE REST OF THE ARTICLE THAT WAS PRESENTED, HOW DID YOU INTERPRET THAT? NOT SO MUCH IT INTERPRET.
HOW DID YOU VIEW IT? WHAT DID YOU THINK ABOUT THAT?
A. THERE WERE SEVERAL PARTS.
FIRSTLY, THERE WERE EXCESS MESOTHELIOMAS. USUALLY, YOU FIND SOME EXCESS LUNG CANCERS WHERE THAT OCCURS, BUT THE NUMBER WAS SMALL. AND HERE, THERE WAS 70 LUNG CANCERS ANYWAY.
SO EVEN IF YOU HAD FOUR EXCESS LUNG CANCERS OR SEVEN, YOU'D STILL ONLY GET A RELATIVE RISK OF 1.1. SO IN THAT REGARD, THE STUDY IS INCONCLUSIVE.
THE SECOND PART, THOUGH, THIS WAS EXPOSURE RELATED TO MINING. AND MINING HAS NOT BEEN A MAJOR SOURCE OF ASBESTOS DISEASE IN THE WORLD. AND IT'S WIDELY DESCRIBED IN THE LITERATURE.
AND IT IS MY OPINION THAT THE REASON WHY THE RISKS ARE MUCH LOWER TO MINERS THAN PROJECTED FROM OTHERS IS THAT IN THE MINING SITUATION ARE NOT THE FINE PARTICLE INHALATION DEEP INTO THE LUNGS WHICH HAS OCCURRED WHERE

2927

INSULATION HAS BEEN MADE IN FACTORIES OR WHERE IT'S BEEN ACTUALLY USED.
AND THAT'S WHAT OTHERS HAVE OPINED EXTENSIVELY, INCLUDING THE USEPA, AS TO WHY IT IS THAT THE RISK MAY BE LOWER ASSOCIATED WITH MINING THAN IN OTHER SETTINGS, SUCH AS INSULATION WORK.
Q. AND ON THE FIRST POINT, YOUR POINT WAS THAT IF THE MINERS HAVE A LOW INCIDENCE OF LUNG CANCER, THEN YOU WOULDN'T EXPECT PEOPLE IN THEIR FAMILIES TO HAVE A SIGNIFICANT LUNG CANCER RATE?
A. RIGHT. YOU MIGHT NOT PICK IT UP. THERE MAY BE SOME RISK THERE, BUT LOW LEVELS OF RISK.
EVEN THOUGH ACTUAL CASES MAY BE CAUSED, WE CAN'T PROVE IT ONE WAY OR ANOTHER.
THIS IS A SETTING WHERE A SINGLE STUDY LIKE THIS IS INCONCLUSIVE, YES.
Q. OKAY. JUST A FINAL QUESTION.
I WANT YOU FOCUS ON 1972 AND 1972 EXPOSURE. AND THOSE ARE THE TWO YEARS -- TWO OF THE YEARS IN WHICH MR. WHITTEKER, TROY WHITTEKER, WAS WORKING AS A PIPEFITTER AT THE ORMOND BEACH PLANT.
AND I'D LIKE TO ASK YOU THIS: WOULD IT BE YOUR OPINION THAT THE EXPOSURES THAT LESLIE WHITELEY GOT IN THOSE TWO YEARS, TAKEN BY THEMSELVES, WERE SUFFICIENT FOR YOU TO CONSIDER THEM A SUBSTANTIAL FACTOR IN THE DEVELOPMENT OF THE RISK OF HER LUNG CANCER?
A. YES.
MR. BROWN: THAT'S ALL I HAVE.

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THE COURT: ANYTHING FURTHER BY ANYBODY FOR DR. SMITH?
MR. ROSSE: YES, YOUR HONOR.
THE COURT: YES, MR. ROSSE.

RECROSS-EXAMINATION

BY MR. ROSSE: Q. GOING BACK TO THIS STUDY,

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DOCTOR. THERE WERE AN EXCESS NUMBER OF MESOTHELIOMAS FOUND IN THIS STUDY; CORRECT?

A. THAT'S CORRECT.

Q. ISN'T IT TRUE THAT 5 PERCENT OF THE WOMEN IN THIS STUDY WORKED IN THE BAGGING DIVISION OF THE MILL?

A. THERE WERE SOME THAT WORKED. I DON'T KNOW EXACTLY WITHOUT LOOKING.

Q. ISN'T IT TRUE THAT SEVERAL OF THE EXCESS MESOTHELIOMAS OR SEVERAL OF THE MESOTHELIOMA CASES THAT CAME OUT OF THAT 5 PERCENT WORKED IN THE MILL, NOT THE HOUSEHOLD EXPOSURES?

A. I DON'T RECALL. THERE WERE SOME LINKED -- SOME OCCUPATIONAL EXPOSURES.

SOME OF THE MESOTHELIOMAS THAT OCCURRED IN THE WOMEN ARE DUE TO SOME OCCUPATIONAL EXPOSURE, BUT NOT ALL OF THEM.

Q. YOU MENTIONED THAT THERE WAS A SLIGHT INCREASE IN LUNG CANCERS; I THINK YOU SAID 70 VERSUS 77?

A. NO. I WAS POINTING OUT THAT IN THIS STUDY IN THESE WOMEN, THERE WAS 70 LUNG CANCERS ANYWAY.

SO IF YOU HAD FOUR MORE OR SEVEN MORE OR

2929

SOMETHING LIKE THAT, IT'S ALMOST IMPOSSIBLE TO PICK UP IN A STUDY LIKE THIS A SMALL INCREMENT.

SO LET'S SAY THERE ARE 70. MAYBE THERE SHOULD HAVE BEEN 66, BUT ASBESTOS CONTRIBUTED TO FOUR. WE JUST DON'T KNOW.

THERE IS TOTAL IMPRECISION IN TRYING TO PICK UP LUNG CANCER RISKS IN THIS PARTICULAR STUDY.

Q. CONSIDERING 5 PERCENT OF THE WOMEN IN THE STUDY WERE OCCUPATIONALLY EXPOSED, YOU MIGHT HAVE EXPECTED TO SEE SOME LUNG CANCER INCREASE FROM THOSE WOMEN, WOULDN'T YOU?

A. AGAIN, NOT IN THE MANNER DEPICTED IN THE DOMAIN OF WHAT WE CALL A DETECTABLE INCREASED RISK. IN A STUDY LIKE THIS, THE NUMBERS JUST DON'T ALLOW A FIRM CONCLUSION.

Q. THAT'S BECAUSE THERE'S WHAT YOU CALL CHANCE?

A. NO. THAT'S BECAUSE LUNG CANCER IS COMMON. IT DOES OCCUR. IT'S WIDESPREAD. SO THERE'S CASES OF LUNG CANCER MAINLY DUE TO SMOKING.

NOW, IF YOU WANT TO DETECT AN INCREMENT FROM ANOTHER CAUSE -- AND THERE'S A LARGE NUMBER ALREADY DUE TO SMOKING -- THAT ESTIMATE MAKES IT VERY HARD IN STUDIES ULTIMATELY. FROM THE STATISTICAL SIDE, IT IS A CHANCE ISSUE.

BUT THE FUNDAMENTAL REASON IS THAT A LOT OF LUNG CANCER OCCURS FOR REASONS OTHER THAN ASBESTOS EXPOSURE.

Q. CONSIDERING YOU HAVE OPINED THAT SYNERGY ACCOUNTS FOR 70 LUNG CANCERS AND THERE WAS A RELATIVE RISK OF TWO FROM THE ASBESTOS EXPOSURE, WOULDN'T WE EXPECT TO SEE ABOUT 140?

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A. I DON'T UNDERSTAND THE QUESTION.

Q. WOULDN'T YOU EXPECT TO SEE TWICE AS MANY LUNG CANCERS?

A. I DON'T UNDERSTAND YOUR QUESTION, WHAT YOU'RE REFERRING TO.

Q. YOU SAID THAT ASBESTOS IN SMOKING ACTS SYNERGISTICALLY?

A. CORRECT.

Q. SO IF THERE'S A RELATIVE RISK OF DEVELOPING LUNG CANCER FROM ASBESTOS OF TWO, AND WE EXPECTED TO SEE 70 LUNG CANCERS FROM SMOKING, WOULDN'T WE EXPECT TO SEE ABOUT 140 LUNG CANCERS IF THEY ACT SYNERGISTICALLY?

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A. WHERE DID YOU GET THE RELATIVE RISK OF TWO FROM?
Q. IN A HYPOTHETICAL, DOCTOR.
A. I'M SORRY. IT DOESN'T MAKE EPIDEMIOLOGICAL SENSE.
Q. WHAT WAS THE RELATIVE RISK FOR NONOCCUPATIONAL EXPOSURE TO ASBESTOS?
A. IT DEPENDS ON THE EXPOSURE. IT'S NOT CLEARLY ESTABLISHED EXACTLY WHAT THE NUMBERS ARE.
IN SOME OF THE STUDIES THAT WE TALKED ABOUT, THE RISKS ARE THE ORDER OF 50 PERCENT INCREASE, BUT IT'S GOING TO VARY, DEPENDING ON THE EXPOSURE LEVEL.
Q. IN FACT, IN THE CANADIAN MINER STUDY, THERE WAS NO INCREASED RISK?
A. THAT'S CORRECT.
Q. NOW, YOU TESTIFIED THAT THE MINERS DON'T HAVE AS HIGH A RATE OF DISEASE BECAUSE OF THE INHALATION OF FIBERS?

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A. IT IS CORRECT. THEIR RATE OF DISEASE IS MUCH LOWER THAN FACTORY WORKERS OR THOSE WHO WORK WHERE INSULATION IS BEING USED. IF YOU LOOK AT THE PREDICTIONS, YES.
Q. WHAT ABOUT MILLERS?
A. I DON'T HAVE SEPARATE NUMBERS FOR MILLERS.
Q. BUT A MILLER -- A MILL IS WHERE THEY TAKE THE ROCK AND THEY CRUSH IT, AND THAT CREATES EXTREMELY FINE FIBER, DOESN'T IT?
A. WELL, FIRST, MILLING IS ALL PART OF THE SAME STUDIES THAT SHOW LOWER ASBESTOS DISEASE RATES.
BUT WHEN YOU GET WITHIN IT, I'M NOT AN EXPERT ON THE DETAILS OF WHAT HAPPENS IN THE MINING. ALL I CAN TELL YOU, THAT THE STUDIES DON'T FIND HIGH -- AS HIGH ASBESTOS DISEASE RISKS AS YOU'D EXPECT.
AND ANY SUBSET LIKE THAT, I JUST CAN'T ANSWER.
Q. THIS ISN'T THE FIRST STUDY OF THETFORD MINES IN QUEBEC, CANADA, IS IT?
A. NO.
Q. IN FACT, SEVERAL OF THOSE STUDIES HAVE FOUND HIGHER RATES OF ASBESTOSIS, LUNG CANCERS IN ANY STUDY OF ASBESTOS EXPOSURE; ISN'T THAT CORRECT?
A. NO. IT'S NOT ABSOLUTELY NOT CORRECT.
IN FACT, THERE IS A STUDY THAT CAME OUT RECENTLY SUGGESTING THERE IS VERY LITTLE INCREASE IN LUNG CANCER, CERTAINLY MUCH LESS, EVEN IF YOU PREDICT MANY THOUSANDS OF MINERS.
SO QUITE LARGE NUMBERS DID GET ASBESTOSIS. BUT

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IF YOU LOOK AT THE ACTUAL RISKS AND WHERE ASBESTOS DISEASE IS OCCURRING, OVERWHELMINGLY IT'S BEEN IN CONSTRUCTION TRADES, IN SHIPYARDS, AND THEN BEHIND THAT GROUP, THEN FACTORIES, NOT IN THE MINERS.
MR. ROSSE: NOTHING FURTHER, YOUR HONOR.
THE COURT: DOES ANYBODY HAVE ANY FURTHER QUESTIONS FOR DR. SMITH?
ALL RIGHT. THERE ARE NO TAKERS.
SO DR. SMITH, YOU MAY STEP DOWN.
(WITNESS EXCUSED)
THE COURT: WHAT IS THE NAME OF OUR NEXT WITNESS, PLEASE?
MR. BROWN: MR. MONDT.
THE COURT: WHO?
MR. BROWN: MONDT, M-U-N-D-T.
THE COURT: THANK YOU.
THE CLERK: PLEASE COME FORWARD. PLEASE STAND

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RIGHT HERE AND RAISE YOUR RIGHT HAND.

TESTIMONY OF

DONALD RAYMOND MONDT,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR NAME.

THE WITNESS: DONALD RAYMOND MONDT, M-O-N-D-T.

THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

DIRECT EXAMINATION

BY MR. BROWN: Q. MR. MONDT, YOU ARE RETIRED

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NOW, AREN'T YOU?

A. YES, I AM.

Q. AND BEFORE YOU RETIRED, YOU WERE AN INSULATOR?

A. YES, I WAS.

Q. IN THE LATE '60S AND FOR ABOUT 18 YEARS THEREAFTER, DID YOU WORK OFF AND ON FOR THE METALCLAD CORPORATION?

A. YES, I DID.

Q. WHAT DID YOU DO FOR THE COMPANY?

A. ASBESTOS WORKER, PIPEFITTER, PIPE INSULATOR.

Q. WHAT KIND OF PROJECTS DID YOU WORK ON WHEN YOU WERE WORKING FOR METALCLAD?

A. MAINLY IN HEAVY INDUSTRY, OIL REFINERIES, POWERHOUSES.

Q. DID THAT INCLUDE WORKING ON POWERHOUSES IN THE VENTURA AREA?

A. YES.

Q. DID YOU WORK AT THE ORMOND BEACH POWERHOUSE?

A. YES, I DID.

Q. DID YOU WORK THERE SOMETIME IN THE '70S?

A. I WORKED AT ORMOND BEACH THE SECOND DAY OF JANUARY, 1973, FOR TWO MONTHS.

Q. FOR ABOUT TWO MONTHS?

A. RIGHT.

Q. UP UNTIL MARCH?

A. RIGHT, YES.

Q. AND YOU WORKED FOR METALCLAD BEFORE THAT?

A. YES, I HAD.

2934

Q. AND DID YOU KNOW THE CREW, THE MEMBERS OF THE CREW THAT YOU HAD WORKED WITH, MEMBERS OF THE CREW THAT WERE AT ORMOND WHEN YOU REPORTED ABOARD?

A. YES. I HAD WORKED -- USUALLY, YOU WORK WITH THOSE INSULATORS OFF AND ON THROUGHOUT YOUR PERIOD OF WORK, I MEAN, THROUGH THE YEARS, OFF AND ON.

Q. HOW LONG HAD THE PEOPLE IN THE CREW THAT YOU KNEW BEEN WORKING THERE AT THE TIME YOU GOT THERE?

MR. ROSSE: OBJECTION, YOUR HONOR. CALLS FOR HEARSAY.

THE COURT: SUSTAINED.

MR. BROWN: Q. THE UNION THAT YOU WERE WORKING IN, THE CREW, THE PEOPLE YOU KNEW, THEY WERE WORKING ON THE SAME UNIT WHEN YOU GOT THERE?

A. YES. MOST OF THEM WERE THERE PRIOR TO, BEFORE I GOT THERE.

MR. ROSSE: OBJECTION, YOUR HONOR. HEARSAY. MOVE TO STRIKE.

MR. BROWN: Q. DID YOU --

THE COURT: JUST A MINUTE.

MR. BROWN: I'M SORRY.

THE COURT: I'M GOING TO SUSTAIN AND STRIKE THE

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LAST ANSWER.
HE CAN TESTIFY AS TO WHETHER THEY WERE THERE WHEN HE ARRIVED.
MR. BROWN: THAT'S WHAT HE SAID.
THE COURT: WHAT?
MR. BROWN: I THINK THAT'S WHAT HE SAID.

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THE COURT: NO, HE SAID THEY WERE THERE BEFORE HE WAS THERE.
I'M STRIKING THAT ANSWER. IF YOU WANT TO ASK HIM WHETHER THEY WERE THERE WHEN HE GOT THERE --
MR. BROWN: OKAY.
THE COURT: -- YOU CAN DO THAT.
MR. BROWN: Q. WERE THEY THERE WHEN YOU GOT THERE?
A. YES.
Q. NOW, WAS THE UNIT THAT YOU WORKED ON JUST ABOUT FINISHED?
A. YES, IT WAS.
Q. WAS THERE WHAT THEY CALL A BLOWOUT WHEN YOU WERE THERE?
A. IT'S CALLED A BLOWDOWN.
Q. BLOWDOWN. I'M SORRY.
THE COURT: CAN YOU SLOW DOWN?
MR. BROWN: I WILL.
Q. TELL US WHAT A BLOWDOWN IS.
A. WHEN THEY FINISHED UP A UNIT, THEN THEY START THE BOILER UP, AND THEY HAVE TO CLEAN ALL THE LINES, ALL THE HIGH PRESSURE STEAM LINES OUT, SO THEY HAVE TO RUN STEAM THROUGH THEM, VERY HIGH PRESSURE.
AND USUALLY, THEY GET THE STEAM ON THE TURBINE LEVEL, NEXT TO THE TURBINE WHERE THEY PUT THESE VALVES, THEY BUILD UP PRESSURE IN THE BOILER.
AND THEN THEY OPEN UP VALVES, AND THAT BLOWS WAY UP IN THE AIR, LIKE THE LOUDEST JET ENGINE YOU COULD EVER

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THINK, 2000 POUNDS OF PRESSURE I JUST ASSUMED, APPROXIMATELY.
AND IT BLOWED ALL THE STREAM THROUGH THESE PIPES THAT HAVE JUST BEEN BUILT AND PUT TOGETHER TO CLEAN THEM OUT UNTIL THEY'RE TOTALLY CLEAN.
Q. THIS IS SOMETHING THEY DO TOWARD THE END OF THE TIME OF THE CONSTRUCTION OF THE UNIT?
A. THAT'S CORRECT.
Q. OKAY. NOW, HOW LONG DID YOU WORK FOR METALCLAD? WHEN DID YOU START AND WHEN WAS THE LAST THAT YOU WORKED FOR THEM? I'M TALKING ABOUT OFF AND ON.
A. ARE YOU TALKING ABOUT --
MR. ROSSE: I'M NOT SURE WHETHER HE IS TALKING ABOUT JOBSITES.
MR. BROWN: I WILL REPHRASE.
THE COURT: I NEED TO REEMPHASIZE THIS TO YOU. YOU ARE GOING TOO FAST, MR. BROWN, AND THE WITNESS TOO. YOU NEED TO SLOW DOWN, BOTH OF YOU, BECAUSE THE COURT REPORTER IS TRYING TO TAKE THIS DOWN, AND YOU HAVE TO WAIT FOR EACH OTHER TO FINISH BEFORE YOU START TALKING.
WE'RE GOING TO ALL BE HERE AND WE ARE GOING TO ALL HEAR EVERYTHING YOU HAVE TO SAY. SO THERE'S NO NEED FOR SPEED HERE. OKAY.
SO PLEASE, TAKE IT TO HEART. I CAN'T DO MORE THAN KEEP REPEATING THIS TO YOU, BUT YOU'RE BACK AT THE SAME PACE THAT YOU WERE AT BEFORE WE HAD THIS DISCUSSION THIS MORNING. SO I HAVE GOT TO ASSURE THAT WE DON'T BURN JUDITH

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28 OUT. OKAY?
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1 MR. BROWN: OKAY.
2 THE COURT: PLEASE.
3 MR. BROWN: Q. WHEN DID YOU START WITH
4 METALCLAD?
5 A. YOU MEAN FOR THE FIRST TIME?
6 Q. YES. APPROXIMATELY.
7 A. PROBABLY, MAYBE 1969.
8 Q. OKAY. AND YOU WORKED, OFF AND ON, ABOUT 18 YEARS
9 WITH THEM?
10 A. THAT'S CORRECT.
11 Q. DID METALCLAD SUPPLY THE PRODUCTS THAT THEY
12 INSTALLED, INCLUDING AT ORMOND BEACH?
13 MR. ROSSE: OBJECTION, YOUR HONOR. CALLS FOR
14 HEARSAY.
15 MR. BROWN: IT CALLS FOR HIS OBSERVATION.
16 THE COURT: OKAY. BUT IF YOU WANT TO KNOW HIS
17 OBSERVATION, YOU NEED TO ASK HIM WHAT HE SAW.
18 THE QUESTION IS SO VAGUE AND GENERAL THAT IT
19 MIGHT WELL CALL FOR MORE THAN THAT.
20 IT'S JUST TOO VAGUE.
21 MR. BROWN: Q. IN THE JOBS YOU WORKED ON,
22 INCLUDING ORMOND BEACH, DID YOU OBSERVE THE METALCLAD PEOPLE
23 PROVIDING AND SUPPLYING THE INSULATION THAT WAS BEING
24 INSTALLED?
25 A. YES.
26 Q. NOW, WHEN WAS THE FIRST TIME THAT YOU SAW BOXES
27 ON A METALCLAD JOB THAT SAID "ASBESTOS-FREE"?
28 A. I DON'T RECALL EVER SEEING ANY ASBESTOS-FREE
2938
1 BOXES UNTIL ABOUT THE MID-70S, SOMEWHERE AROUND '75.
2 Q. OKAY. ALL RIGHT. NOW, JUST IN GENERAL, WHAT WAS
3 THE METALCLAD CREW DOING AT ORMOND BEACH WHILE YOU WERE
4 THERE?
5 A. WE WERE INSULATING ALL THE STEAM LINES, THE
6 TURBINE, THE FUEL OIL LINES.
7 JUST ABOUT ANYTHING THAT HAD TO DO WITH STEAM WAS
8 COVERED -- WAS INSULATED.
9 Q. OKAY. NOW, METALCLAD HAD THIS NAME "METALCLAD."
10 AND DID THAT HAVE SOME RELATIONSHIP TO THE WAY THEY
11 INSULATED PIPES AS OPPOSED TO THE WAY OTHER INSULATORS
12 INSULATED PIPES?
13 MR. ROSSE: OBJECTION, YOUR HONOR. FOUNDATION.
14 CALLS FOR HEARSAY.
15 THE COURT: SUSTAINED.
16 MR. BROWN: Q. YOU WORKED WITH THEM FOR 18
17 YEARS?
18 A. OFF AND ON, YES.
19 Q. YOU WORKED FOR OTHER INSULATION CONTRACTORS?
20 A. MANY, MANY INSULATORS.
21 Q. DID METALCLAD HAVE A UNIQUE WAY OF INSULATING
22 SOME OF THE PIPES?
23 A. THAT IS CORRECT; THEY DID.
24 Q. WOULD YOU -- THAT'S CORRECT?
25 A. YES.
26 Q. OKAY. WOULD YOU DESCRIBE WHAT THAT UNIQUE
27 APPROACH WAS.
28 A. WELL, METALCLAD, MR. KEMPER -- WHO OWNED THE
2939
1 COMPANY ORIGINALLY, WHICH WAS CALLED METALCLAD -- HE
2 DEVELOPED A WAY OF PUTTING IN THE TWO HALF-ROUNDS OF
3 INSULATION AND GLUING THEM INTO THE METAL.

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AND THEN, WHEN YOU APPLIED THE INSULATION, IT ALSO APPLIED THE JACKETING, WHICH IS ALUMINUM. AND IT WAS LIKE A ONE-STEP PROCESS THEN.

SO IT SPED UP THE PROCESS OF INSULATING THE LINES, AND YOU ALSO WERE WATERPROOFING AND FINISHING IT AT THE SAME TIME.

IT WAS MR. KEMPER, WHO WAS THE ORIGINAL OWNER OF METALCLAD.

Q. NOW, THIS WASN'T DONE ON ALL THE LINES THAT YOU INSULATED?

A. NO.

Q. ALL RIGHT. LET ME TRY A CRUDE DRAWING OF WHAT YOU JUST TOLD US.

BEFORE I DO THAT, LET ME ASK YOU: IS THIS AN EXAMPLE OF A HALF-ROUND (INDICATING)?

A. YES.

Q. OKAY. AND THESE COME IN DIFFERENT SIZES?

A. YES, THEY DO.

Q. (PREPARING DRAWING)

OKAY. YOU WOULD HAVE LIKE A CIRCLE IN WHICH THE METAL WOULD BE?

A. YES.

Q. THE HALF-ROUND WOULD GO IN THE CENTER?

A. GLUED INTO THE HALF. THERE WILL BE AN OPENING ON THE METAL. YOU HAVE USUALLY ABOUT THIS THREE-INCH LAP

2940

METAL. SO I HAVE A LAP AND THAT PART OF THE CENTER WOULD BE THE INSULATION WOULD BREAK. YOU COULD OPEN IT UP AND APPLY IT.

Q. SO THE HALF-ROUND I JUST SHOWED YOU, IT WOULD BE -- IT WOULD BE IN HERE (WRITING ON BOARD)? THERE WOULD BE INSULATION AROUND IT, BETWEEN THE METAL AND THE HALF-ROUND?

A. THEN YOUR LAP WOULD BE AT THE TOP PART, WHERE THE OPENING IS.

SO YOU OPEN IT UP, PUT IT ON, CLOSE IT, HAVE YOUR LAP, WHICH IS ALWAYS DOWN FROM WATERSHED.

Q. OKAY. SO INSTEAD OF THIS, IT WOULD BE THE PIPE IN HERE (INDICATING)?

A. MM-HMM.

Q. AND IN HERE, YOU WOULD HAVE SOME KIND OF INSULATION?

A. CORRECT.

Q. WHICH WOULD BE WHAT?

A. WELL, IT COULD BE THE HARD INSULATION OR METALCLAD THAT THEY DEVELOPED, TO PUT LIKE MINERAL WOOL IN THERE.

Q. MINERAL WOOL. OKAY.

NOW, WAS THERE A REASON THAT MINERAL WOOL WOULDN'T WORK ON THE TOP -- LET'S SAY THIS IS THE TOP OF THE PIPE (INDICATING).

WAS THERE A REASON WHY MINERAL WOOL WOULDN'T WORK ON THE TOP OF THE INSULATION CYLINDER?

A. YES. WHAT THEY FOUND OUT WAS THAT YOUR MINERAL

2941

WOOL IS LIKE A FIBERGLASS. IT'S VERY SOFT AND METAL. ANYTHING LOW, WHERE ANYBODY ACCESSES IT, IF THEY STEP ON IT OR LEAN, IT WOULD CRUSH DOWN, AND IT WOULD THEREFORE BREAK IT, YOU KNOW, DOWN, AND LOOSEN IT UP.

SO THEY STARTED PUTTING -- ON YOUR BIGGER PIPES, THEY PUT TWO PIECES, TWO STRIPS OF HARD, WHICH WOULD BE THE HARD INSULATION ON TOP. SO IF ANYBODY STEPPED ON IT OR LEANED ON IT, IT WOULDN'T CRUSH.

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Q. SO THAT'S WHAT YOU WERE DOING AT ORMOND BEACH?
A. RIGHT, ON THE FUEL OIL LINES.
Q. ON THE FUEL OIL LINES.
WHAT WOULD YOU USE HERE? WHEN YOU SAY "THE HARD INSULATION," ARE YOU TALKING ABOUT BLOCK?
A. YES.
Q. BLOCK WITH ASBESTOS IN IT?
A. YES. AT THAT TIME, I'M SURE IT HAD IT IN THERE.
Q. NOW, DESCRIBE BLOCK TO US, BECAUSE WE DON'T HAVE A PIECE OF IT HERE.
A. WELL, YOU HAD TWO DIFFERENT KINDS OF INSULATION. YOU HAD YOUR HALF-ROUNDS, WHICH THEY CALL PIPE COVERING. AND THEN YOU HAD BLOCK INSULATION, WHICH WOULD COME, IT WOULD PROBABLY -- BLOCK INSULATION WOULD START OUT AT 12-BY-36. EVERYTHING WAS ALWAYS 36 INCHES LONG. THEY COULD ORDER SIX-INCH BLOCK.
IF YOU WANTED TO PUT LAGS ON TOP OF A PIPE, OR SAY EVEN AROUND A VESSEL, THEN YOU COULD ORDER THEM IN INCH AND A HALF WIDE, YOU KNOW, ANYTHING, THE VARIOUS SIZES.
BUT IT WAS ALWAYS 36 INCHES LONG.

2942

Q. NOW, YOU SAID THESE WERE PUT ON THE 20-INCH LINES?
A. THAT WAS FUEL OIL LINES, WHICH ARE APPROXIMATELY -- THEY COULD VARY IN SIZE, BUT THEY WERE LIKE LARGE LINES, BECAUSE THEY WERE CARRYING FUEL OIL FROM THE TANKS TO THE UNIT.
Q. AND WHAT WAS THE DIMENSIONS OF THE BLOCK THAT WOULD BE PUT UP ON THE TOP?
A. USUALLY, THERE WAS TWO BLOCKS, BE AN INCH AND A HALF WIDE, BECAUSE THEY HAVE TO CONTOUR AROUND. THEY COULDN'T LIKE HAVE SIX-INCH-WIDE BLOCK. IT WOULDN'T FIT.
USUALLY ABOUT INCH AND A HALF WIDE, TWO OF THEM ON THE TOP. SO THAT YOU COULDN'T CRUSH THE INSULATION DOWN. IT HAD TO BE FIRM.
Q. SO THERE WOULD BE LIKE TWO PIECES UP HERE. AS I SAID, I'M NOT GOING TO GET ANY AWARDS FOR THE ARTISTRY HERE.
TWO PIECES ABOUT INCH AND A HALF IN SIZE THAT WOULD RUN THE LENGTH OF THE PIPE?
A. ON THE TOP, THE WHOLE LENGTH OF THE PIPE, YES.
Q. SO IF WE WERE LOOKING AT THE PIPE FROM THE TOP, THESE WOULD RUN ALL THE WAY ALONG THE PIPE AS MANY FEET -- AS MANY AS -- WHATEVER DISTANCE THE PIPE WAS, IT WOULD RUN ALONG THE PIPE TOP?
A. THAT'S CORRECT.
Q. DID THEY HAVE TO BE CUT?
A. USUALLY, THEY WOULD ORDER THE BLOCK. IF THEY WANTED TWO-INCH LAG OR INCH AND A HALF LAG UP THERE -- A LOT

2943

OF TIMES WHEN THEY DO A VESSEL, THEY CUT ON AN ANGLE. SO THAT WHEN YOU STACK THEM TOGETHER AROUND YOUR TANK OR YOUR PIPE, THEY WOULD COME TOGETHER.
OTHERWISE, THEY WERE SQUARE. THERE WOULD ALWAYS BE A GAP AT THE TOP. SO THEY'D TAKE AND MITER IT, AND THEY WOULD COME TOGETHER. IT WOULD BE FLAT.
Q. SO IT WOULDN'T LOOK LIKE THIS (INDICATING)? IT WOULD ACTUALLY BE FIRM, UP AGAINST THE METAL?
A. COME TOGETHER TO FIT ON THE PIPE. THEY CUT IN THERE. IT WOULD SET TOGETHER AND IT WOULD BE TIGHT AND MORE FORM-FIT AROUND YOUR PIPE.
Q. SO FROM THE TIME THAT YOU HAD THIS BLOCK IN THERE, THEN YOU COULD CRAWL OVER IT OR YOU COULD WALK ON IT

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AND IT WOULDN'T CRUSH?
A. THAT'S CORRECT. LIKE THE SAMPLE YOU SHOWED THERE. IT'S A FIRM INSULATION.
Q. NOW, DID THEY ALSO PUT THAT ON SMALLER PIPE THAN THE 20-INCH?
A. USUALLY, SMALL PIPES WOULD HAVE TO BE JUST A SOLID PIECE OF PIPE, NOT WHAT YOU HAVE THERE.
Q. IN THE SMALLER PIPES, DID THEY ALWAYS PUT THE MITERED BLOCK IN THE TOP?
A. WELL, THE SMALLER PIPES WOULD BE THE HALF-ROUND. SO IT WAS ALREADY SHAPED, PREFORMED.
Q. LIKE THE ONES YOU SHOWED ME?
A. RIGHT.
Q. WAS THERE A LOT OF LINEAR FEET OF OIL LINES AT ORMOND BEACH THAT YOU WERE PUTTING INSULATION ON?

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A. WELL, YES, THERE WAS. I COULD ONLY GUESS. MAYBE SEVERAL THOUSAND FEET, BECAUSE THEY WOULD TIE INTO EACH TANK, FUEL STORAGE TANK. YOU GO TO A PUMP STATION. FROM THE PUMP STATION, YOU HAVE TO PUMP OIL. REAL THICK CRUDE OIL WON'T MOVE UNLESS YOU HEAT IT UP.
AND YOU HAVE TO HEAT IT UP TO GET IT TO MOVE. THEN YOU HAVE YOUR PUMPS.
MR. BROWN: OKAY. LET ME SHOW YOU SOME PICTURES. I THINK THE "E" WITH A CHECK MARK MEANS IT'S IN EVIDENCE?
THE CLERK: YES.
MR. BROWN: LET ME SHOW YOU WHAT'S IN EVIDENCE AS 1852.
Q. FIRST OF ALL, LET ME SHOW YOU -- LOOK THROUGH THERE.
DO YOU RECOGNIZE THAT AS THE ORMOND BEACH PLANT?
A. WHEN I WAS THERE, I DON'T RECALL. IT LOOKS LIKE THAT.
Q. YOU ARE TALKING --
A. THE TREES AND STUFF.
Q. YOU ARE TALKING ABOUT THE GATE?
A. YES, THE GATE.
Q. MOVE PAST THAT TO THE PICTURE OF THE STRUCTURE.
A. THE CONSTRUCTION GATES WERE USUALLY NOT IN THE MAIN ENTRANCE. THEY USUALLY TRIED TO GET YOU AS CLOSE TO THE UNIT THEY COULD GET YOU. IT WOULD BE IN THE BACKSIDE OFF --
Q. CAN YOU FIND SOME OF THE FUEL LINES IN ONE OF

2945

THOSE PICTURES, FUEL LINES THAT WOULD BE INSULATED THE WAY YOU'VE TESTIFIED HERE?
A. THE FUEL LINES WOULD COME IN FROM THE BOTTOM. AND YOU PROBABLY WOULDN'T -- THIS ONLY SHOWS THE UNIT (INDICATING). IT SHOWS YOUR MAIN STEAM LINES COMING DOWN.
Q. ALL RIGHT. NOW, LET ME ASK YOU THIS: DID YOU INSTALL ASBESTOS INSULATION ON SOME OF THE PIPE?
A. YES.
Q. AND ON SOME OTHER OF THE EQUIPMENT THAT WAS AT THE PLANT?
A. I WORKED -- I ALSO WORKED ON TURBINES. IT'S ALWAYS DONE WITH A HARD BLOCK AND MUD. THE APPLICATIONS, YOU PUT THE MUD ON THE SHELL OF THE TURBINE, AND THEN YOU TAKE USUALLY SIX-INCH BLOCK AND SCORE IT. SO WHEN YOU PUT IT ON TOP, IT BREAKS AND FORMS, BECAUSE IT'S A ROUND, HALF-ROUND SURFACE ON THE TURBINE.
Q. AND THE TURBINE --
A. YOU HAVE A BOTTOM SIDE AND YOU HAVE A TOP SIDE

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AND THEY PUT IT TOGETHER.
Q. AND THE TURBINE IS DOWN ON THE DECK, ON THE GROUND?
A. IT'S ON THE TURBINE LEVEL.
Q. TURBINE LEVEL?
A. RIGHT. IT'S CALLED A TURBINE LEVEL. THAT'S WHERE THE TURBINE IS AND THE GENERATOR.
Q. DID YOU MIX THE MUD?
A. USUALLY, WE HAD A HELPER, WHAT THEY CALL A HELPER OR AN APPRENTICE. AND THAT WAS THEIR JOB.

2946

BUT SOMETIMES YOU HAD TO MIX YOUR OWN. IT DEPENDS.
Q. WHEN THE MUD WAS MIXED, DID IT COME FROM A DRY MIX THAT WAS DUSTY?
A. IN A SACK. AND YOU OPEN IT, PUT IT IN YOUR MUD BOX -- PEOPLE ALWAYS CALL THEM MUD BOXES -- YOU ADD YOUR WATER. YOU HAD A HOLE AND YOU MIXED IT UP.
Q. WHEN THE APPRENTICE POURED THE BAG OF MUD INTO WHATEVER YOU WERE GOING TO MIX IT IN, DID THAT CREATE A DUST SITUATION?
A. OH, YES. BECAUSE IT IS DUSTY. SO THERE'S NO WAY NOT TO KEEP IT FROM, YOU KNOW, DUST.
Q. THIS BLOCK YOU WERE PUTTING ON THE TURBINE AND PERHAPS OTHER PLACES, DID THAT HAVE TO BE CUT TO FIT?
A. USUALLY, WHAT THEY WOULD ORDER OUT, THE SIZE WE USE WOULD BE ABOUT A SIX-INCH BLOCK.
THEN WE'D HAVE TO -- BEING THE TURBINE SHELL WOULD BE ROUND, WE'D HAVE TO SCORE IT, USUALLY LENGTHWISE,.
AND THEN MAYBE EVERY SIX INCHES, PUT A CUT IN IT WITH A HAND SAW, DOWN ABOUT HALF THE THICKNESS OF THE BLOCK.
USUALLY, THE BLOCK WOULD EITHER BE TWO LAYERS, TURBINE BEING RUN ABOUT 1,000 DEGREES OR SO. SO IT WOULD HAVE AT LEAST TWO LAYERS OF BLOCK STAGGERED.
IT COULD EITHER BE ONE-HALF OF TWO-INCH BLOCK, AND THEN THE NEXT LAYER, TWO AND HALF, OR SOMETIMES THEY JUST USE LAYERS, LAYERS OF TWO AND A HALF. YOU ALWAYS HAVE TO HAVE THE MUD TO STICK IT ON FIRST.
THE COURT: THAT'S WHAT YOU SAID?

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THE WITNESS: YES. YOU STICK THE BLOCK ON THERE WITH MUD. FIRST, YOU HAD TO USE STAINLESS STEEL WIRE, BECAUSE THE TEMPERATURE OF THE TURBINE IS 1,000 DEGREES.
YOU HAD TO USE STAINLESS WIRE, SO IT WOULDN'T BURN OFF.
Q. IS THERE A PICTURE OF THE TURBINE IN THAT EXHIBIT?
A. THIS RIGHT HERE (INDICATING). USUALLY THEY HAD --
Q. HOLD THAT UP SO I CAN SEE IT. PERHAPS THE JURY TOO.
A. THIS IS THE TURBINE LEVEL RIGHT HERE. THE TURBINE AND GENERATOR.
THEY WOULD ALSO COVER THEM WITH A CASING OVER IT THAT WOULD BE RIGHT HERE (INDICATING).
Q. SO INSULATION IS INSIDE THAT CASING?
A. YES, THE GENERATOR AND THE TURBINE.
AND THEN I THINK THESE ARE CALLED DA TANKS. USUALLY MAIN STEAM COME DOWN OFF THE TOP OF THE BOILER, COME DOWN HERE AND FEED THE TURBINE.
AND THAT'S ONE REASON WHY THEY WOULD HAVE BLOWDOWNS TO CLEAN OUT THE LINES (INDICATING).
Q. HOLD IT UP A LITTLE HIGHER.

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YOU WERE POINTING TO THAT CYLINDER DOWN AT THE BOTTOM RIGHT AS A TURBINE?

A. THAT IS WHERE THE TURBINE WOULD FIT ON THE TURBINE LEVEL. THE STEAM WOULD COME DOWN OFF THE TOP OF THE POWERHOUSE DOWN HERE, AND THEN FEEDS TO THE TURBINE.

2948

AND THEN THE STEAM IS WHAT TURNS THE TURBINE TO GENERATE THE ELECTRICITY IN THE GENERATOR.

Q. NOW, THE INSULATOR CREW, THE METALCLAD CREW YOU WERE WORKING WITH, WERE THEY WORKING ALL THROUGH THIS STRUCTURE?

A. USUALLY, AT THAT TIME, THEY'RE EVERYWHERE. ALL THESE LINES HERE THAT YOU SEE THAT ARE SILVER ARE ALL INSULATED LINES.

MR. ROSSE: OBJECTION. HEARSAY, YOUR HONOR.

THE COURT: JUST A SECOND.

MR. ROSSE: OBJECTION. HEARSAY. MOVE TO STRIKE.

THE WITNESS: WHAT?

THE COURT: HOLD ON. I HAVE TO TAKE CARE OF THIS PROBLEM. THIS ISN'T YOUR PROBLEM. IT'S MINE.

WHEN YOU SAID THAT THOSE THINGS WERE INSULATED, DO YOU KNOW THAT FROM PERSONAL OBSERVATION? ARE YOU RELYING ON SOMETHING ELSE IN GIVING THAT TESTIMONY?

THE WITNESS: I WORKED ON MANY MAIN POWERHOUSES. ANYTHING THAT'S GOING UP, THESE ARE YOUR MAIN STEAM LINES. THEY HAVE TO BE INSULATED.

THE COURT: ALL RIGHT. I'LL ALLOW THE ANSWER.

MR. ROSSE: THE QUESTION -- THE ANSWER WAS ONE STEP FORWARD. HE'S DESCRIBING --

THE COURT: WHAT DID HE SAY? WHAT DID HE SAY THAT YOU'RE MOVING TO STRIKE?

MR. ROSSE: HIS CREW.

THE COURT: HIS CREW WHAT?

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MR. ROSSE: WORKED ALL THROUGH THE PLANT.

THE COURT: WHEN YOU SAY "YOUR CREW WORKED ALL THROUGH THE PLANT," ARE YOU BASING THAT -- DID YOU SAY THAT?

THE WITNESS: I DON'T KNOW. NOT MY CREW. I PROBABLY SAID "THE CREW."

THE WITNESS: YOU HAVE A LOT TO ACCRUE AS YOUR WHOLE, YOU KNOW, ALL THE PEOPLE THAT ARE WORKING THERE. NOT MY CREW. I DIDN'T RUN THAT JOB.

MR. ROSSE: COULD WE HAVE A SIDEBAR, YOUR HONOR?

THE COURT: ALL RIGHT.

(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: OKAY. JURORS, WHAT I'M GOING TO DO, BECAUSE THERE SEEMS TO BE SOME POTENTIAL CONFUSION ABOUT WHAT THE WITNESS MEANT BY HIS LAST ANSWER ABOUT WHERE "THE CREW" WAS WORKING, I'M GOING TO STRIKE THAT TESTIMONY, WITHOUT PREJUDICE TO THE LAWYERS ASKING ABOUT WHO WAS WORKING WHERE AND WHAT HE KNEW.

BUT BECAUSE OF THE CONFUSION, I'M GOING TO JUST STRIKE THAT ANSWER AND LET YOU START ALL OVER.

OKAY?

MR. BROWN: SURE.

Q. MR. -- IS IT MR. MONDT?

A. MONDT (PRONOUNCING.

Q. MONDT. OKAY.

DID YOU OBSERVE THE METALCLAD INSULATORS WORKING

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THROUGHOUT THAT STRUCTURE?
A. YES. THEY WERE EVERYWHERE.
Q. THEY WERE EVERYWHERE.
OKAY. I'D LIKE TO GET FROM YOU A LIST OF THE EQUIPMENT OR PIPING YOU INSULATED WITH ASBESTOS INSULATION. OKAY.
THE COURT: CAN I JUST ASK YOU A QUESTION ON THAT LAST QUESTION? I STRUCK THE PRIOR ANSWER.
SO WHEN YOU SAY "THROUGHOUT THIS STRUCTURE," THERE IS NO REFERENCE IN THIS RECORD?
MR. BROWN: THANK YOU, YOUR HONOR.
"THAT STRUCTURE" MEANS THE STRUCTURE WHICH IS SHOWN ON 1852-C, THIS ONE RIGHT HERE (INDICATING). OKAY.
THE COURT: IS THERE A QUESTION?
MR. BROWN: I SAID: IS THAT THE STRUCTURE, AND HE SAID YES.
THE COURT: I DIDN'T HEAR IT.
DID YOU ANSWER THAT YES?
THE WITNESS: YES, I DID.
THE COURT: THANK YOU.
THE WITNESS: I KNOW ALL THESE LINES ARE INSULATED.
MR. BROWN: Q. LET ME GO TO THE TYPES OF PIPING OR INSULATION OR EQUIPMENT THAT YOU OBSERVED HAVING ASBESTOS INSULATION PLACED ON IT.
I THINK YOU ALREADY TOLD ME THE TURBINE?
A. TURBINE, YES.
Q. TURBINE. B-I-N-E. OKAY.

2951

HOW ABOUT TWO AND A HALF INCH PIPE AND LOWER?
A. MOST ALL THE SMALL PIPE ALWAYS HAVE TO BE JUST THE HALF-ROUND HARD INSULATION.
Q. MOST SMALL PIPE.
HOW MUCH SMALL PIPE WAS THERE IN THAT STRUCTURE AND AROUND IT THAT YOU WORKED ON?
A. I COULDN'T TELL YOU. FOOTAGEWISE?
Q. THOUSANDS OF FEET?
A. OH, YES. I'D SAY, HAVE TO BE IN VARIOUS AREAS, YES.
Q. IN THE 20-INCH OIL LINES AS YOU DESCRIBED, THAT IS THE BLOCK ON THE TOP?
A. YES.
Q. AND IN SMALLER LINES, WHERE IT WAS NECESSARY TO PROTECT THE TOP FROM WALKING OR CRAWLING ACROSS?
A. USUALLY, IT WOULD BE A SIX-INCH LINE ABOVE WOULD HAVE MAYBE A STRIP IN THERE.
ONLY IF IT'S ACCESSIBLE TO PEOPLE WALKING, LIKE A FLOOR LEVEL.
Q. SURE.
A. ANYTHING UP REALLY HIGH THAT NO ONE GET ON THERE, THEY COULD PUT THE EIGHT-INCH PIPE WITH THE GLASS IN IT.
Q. AND WHEN YOU SAY "REALLY HIGH," YOU'RE TALKING PER FLOOR?
IN OTHER WORDS, IF, PER FLOOR, THE PIPE WAS HIGH ENOUGH SO YOU WOULDN'T BE EXPECTED TO CRAWL ON IT OR WALK ON IT, THEN THEY WOULDN'T DO THIS BLOCK INSULATION ON THE TOP OF THE METALCLAD STUFF?

2952

A. CORRECT.
Q. BUT IF LOW ENOUGH, YOU MIGHT WALK OR CROSS OVER IT SOMEHOW, THEN YOU'D PUT THAT BLOCK ON THE TOP?
A. IT WAS FOR PROTECTION ONLY, FOR PROTECTION OF THE

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PIPES.
Q. IN TERMS OF THE TYPE OF PIPE THAT WAS ON A LOWER LEVEL ON EACH FLOOR, DID THAT ALSO AMOUNT TO THOUSANDS OF FEET OF PIPING?
A. I'M NOT EXACTLY SURE HOW MANY -- HOW MUCH FOOTAGE ON A POWERHOUSE. THE AMOUNT, IT WOULD BE A LOT OF IT.
Q. A LOT OF IT. THAT'S GOOD ENOUGH.
WAS THERE ANYPLACE ELSE YOU USED BLOCK BESIDES THE TURBINE?
A. I THINK ALL THESE HERE DA TANKS AND THINGS (INDICATING).
Q. WHAT DID YOU SAY, "TA" TANKS?
A. THESE HERE (INDICATING).
Q. WHAT ARE THEY CALLED?
A. HEAT EXCHANGERS. THEY ARE ON THE TURBINE LEVEL. AS I RECALL, THEY HAD IT ONLY ON THE TOP PART. THEY PUT THE HARD BLOCK.
EVERYTHING ELSE HAD THE MINERAL WOOL BLANKETING AROUND THE BOTTOM PART.
Q. A COUPLE OF THEM GOT AWAY.
HEAT EXCHANGERS AND SOMETHING ABOUT DA OR VA TANKS?
A. THESE TANKS ARE HERE. THE DA TANKS, DEAIREATORS. THE ACTUAL FUNCTION, THE WORKING MECHANICS OF

2953

IT, I COULDN'T TELL YOU, THE FACT OF THE WAY IT WORKS.
THESE WERE ALWAYS CALLED "DA," TO MY KNOWLEDGE.
Q. LET ME JUST SORT OF CUT TO THE CHASE HERE. HOW WOULD YOU DESCRIBE THE QUANTITY OF ASBESTOS INSULATION THAT THE METALCLAD CREW WAS INSTALLING THERE THAT YOU OBSERVED? WAS IT A LITTLE BIT, OR A LOT OR WHAT?
MR. ROSSE: OBJECTION, YOUR HONOR. VAGUE.
THE COURT: SUSTAINED.
MR. BROWN: Q. GIVE US YOUR BEST DESCRIPTION OF HOW MANY -- WHAT KIND OF QUANTITY OF INSULATION WAS GOING IN THERE ON THESE ITEMS AND ON ANY OTHER THINGS THAT REQUIRED INSULATION?
MR. ROSSE: YOUR HONOR, STILL VAGUE. AND LACKS FOUNDATION.
THE COURT: YES, IT IS. IT'S VAGUE.
THE QUANTITY THAT WAS GOING ON WHEN? WHERE?
MR. BROWN: AS HE OBSERVED IN THIS STRUCTURE.
THE COURT: IN WHAT PERIOD OF TIME?
THE QUESTION IS VAGUE. I'LL SUSTAIN.
MR. BROWN: ALL RIGHT.
Q. LET ME ASK YOU THIS: WHAT KIND OF CLOTHING DID YOU WEAR WHEN YOU WERE WORKING THERE?
A. I WORE --
MR. ROSSE: OBJECTION. RELEVANCE.
MR. BROWN: I WILL TIE IT UP.
THE WITNESS: TO DO WHAT?
MR. BROWN: I'M TALKING TO --
THE COURT: THE JUDGE.

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THE WITNESS: I DON'T --
THE COURT: HOLD ON.
THE WITNESS: I'VE BEEN AROUND CONSTRUCTION SO LONG, I DON'T REALLY HEAR A LOT. SPEAK UP JUST A LITTLE BIT.
MR. BROWN: I'M SORRY. I WILL TRY TO TALK LOUD.
THE COURT: LET ME JUST EXPLAIN THE WAY THIS WORKS.
IF ONE OF THE LAWYERS MAKES AN OBJECTION, THEN

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ASSUMING YOU CAN HEAR IT, YOU HAVE TO STOP ANSWERING, BECAUSE I'M SUPPOSED TO RULE ON IT.

THE WITNESS: I SEE.

THE COURT: SO YOU'VE GOT TO GIVE ME A CHANCE TO DO MY JOB.

OKAY. NOW, WHERE WERE WE?

MR. BROWN: I ASKED HIM WHAT KIND OF CLOTHING HE WORE.

THE COURT: BUT YOU SAID YOU ARE GOING TO TIE IT UP.

ON THAT REPRESENTATION, I WILL ALLOW THE QUESTION.

MR. BROWN: Q. WHAT DID YOU WEAR WORKING ON THAT PLANT?

A. I ALWAYS -- I THINK A LOT OF INSULATORS HAVE THEIR OWN WHAT THEY LIKE TO WEAR, BUT I ALWAYS WORE HALF PANTS. I ALWAYS WORE PANTS AND --

(REPORTER INTERRUPTION)

THE COURT: WHEN SHE INTERRUPTS YOU, SHE'S

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ASKING YOU TO REPEAT WHAT YOU JUST SAID, BECAUSE SHE HAS TO GET DOWN EVERYTHING THAT IS BEING SAID.

AND WHAT SHE'S TELLING YOU, YOU ARE GOING SO FAST THAT SHE CAN'T GET IT. BUT WHAT YOU NEED TO DO WHEN THAT HAPPENS IS GO BACK AND REPEAT THE LAST FEW WORDS. SHE IS TRYING TO CATCH UP WITH YOU.

SO WE DON'T WANT TO GO ON TO SOMETHING ELSE. WE WANTS YOU TO GO BACK AND TELL HER WHAT SHE MISSED. OKAY.

MR. BROWN: Q. YOU WERE DESCRIBING --

A. I WORE PLASTERER'S PANTS, WHITE. THEY JUST COVER YOUR REGULAR PANTS. AND THEN I WORE A SWEAT SHIRT, USUALLY A SWEAT SHIRT OR LONG-SLEEVE SHIRT, ALWAYS SOMETHING LIKE THAT.

Q. WHAT COLOR WERE THOSE OVERPANTS, THE PANTS, ON THE OUTSIDE?

A. USUALLY, ALWAYS WHITE.

Q. WHY DID YOU PICK WHITE RATHER THAN A DARKER COLOR AT THAT ORMOND PLANT?

A. WELL, BECAUSE OF YOUR HARD BLOCK AND PIPE COVERING IS WHITE. AND IF YOU HAD A BLUE JEAN OR SOMETHING LIKE THAT, IT WOULD JUST -- I MEAN, IT WOULD BE WHITE. ANYWAY, JUST SOMETHING THAT THE INSULATOR ALWAYS WORE WHITE.

Q. FOR THE REASON YOU JUST GAVE?

A. RIGHT. IT WOULDN'T LOOK NEAR AS DIRTY RIGHT OFF THE BAT.

Q. NOW, WERE OTHER TRADES WORKING IN AND AROUND YOU AND AROUND THE METALCLAD CREWS THAT YOU OBSERVED?

A. THERE WAS LIKE EVERY CRAFT WAS THERE. WHEN BEING

2956

BUILT, YOU HAVE THE ELECTRICIANS, PIPEFITTERS, WELDERS, BOILERMAKERS, AS FAR AS LABORERS. EVERYBODY IS THERE AT THE SAME TIME.

Q. AND HOW CLOSE IN PROXIMITY TO YOU AND THE WORK THAT YOU WERE DOING WERE THE PIPEFITTERS?

A. WELL, USUALLY THEY'RE EVERYWHERE. IF YOU'RE HIGH UP ON A STRUCTURE, THERE MAY ONLY BE A FEW THERE, BECAUSE MOST OF THIS UP HIGHER IS INSTALLED ALREADY.

OUR INSULATION IS PUT ON AFTER THEY COMPLETED AND TESTED THE LINES. THEY COULD BE COMING BACK DOING SMALL PIPING COMING OUT OF THE TOP, THE VENTS.

BUT AS FAR AS LIKE OUT IN THE FUEL OIL LINES, THERE WOULD BE VERY FEW UP IN THE STRUCTURE. THEY WOULD BE PROBABLY EVERYWHERE.

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Q. OKAY. DID YOU EVER HAVE ANY FRICTION WITH THE PIPEFITTERS ABOUT THE INSULATION DUST OR THE PIECES OF INSULATION?

A. YES. I HAVE HAD YOU MIGHT CALL IT A RUN-IN WITH THEM.

Q. DESCRIBE HOW THAT WOULD HAPPEN.

A. WELL, WE ALWAYS TRY TO MINIMIZE OUR DUST. BUT IN A POWERHOUSE, YOU HAVE WHAT YOU CALL GRATINGS. SO WHEN YOU'RE CUTTING A BLOCK OR A PIECE OF PIPE COVERING, THE DUST FALLS DOWN, AND THEY'RE ALWAYS YELLING AT YOU. "KEEP THE DUST, YOU KNOW, DOWN. IF YOU DROP ONE MORE PIECE ON ME, I'M GOING TO COME UP THERE," AND STUFF LIKE THAT.

Q. DESCRIBE THE SAW, THE TEETH ON THE SAW YOU USED TO CUT THE INSULATION.

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A. WELL, THEY'RE CALLED PRUNING SAWS. AND THEY HAVE LARGE TEETH FOR CUTTING MAINLY WOOD IS WHAT A PRUNING SAW IS FOR. IT'S EASY TO CUT THE INSULATION.

IF YOU USE A FINE-TOOTHED SAW, THEN IT CLOGS UP AND IT WILL NOT CUT. SO YOU HAD TO HAVE SOMETHING THAT WOULD TEAR THROUGH THE INSULATION AND DISPERSE IT.

Q. WOULD THOSE BIG TEETH CAUSE A LOT OF DUST WHEN YOU CUT?

A. YES, THEY WOULD.

Q. WOULD THE DUST BEING CREATED GET ON THE INNER CLOTHES, THE CLOTHES YOU HAD UNDERNEATH THESE PLASTERER'S PANTS?

A. WE TRIED NOT TO LET IT GET THERE. THAT'S WHY WE HAD COVERALLS ON. THE SHIRT, THE LONG-SLEEVE SHIRTS, SOMETIMES THEY GO DOWN IN THAT. IT'S PRETTY HARD TO KEEP IT OFF OF YOU.

Q. WOULD IT END UP IN YOUR POCKETS?

A. OH, YES. IN FACT, WHEN I HAD -- USUALLY, I WOULD ALWAYS TAKE MY WORK CLOTHES HOME ON A FRIDAY, AND I'D HAVE TO TURN THEM UPSIDE DOWN. YOUR FRONT POCKET, YOU CAN PULL THEM INSIDE OUT, GET THE CHIPS OUT AND STUFF.

BUT THE BACK POCKETS, YOU HAD TO HOLD YOUR COVERALLS UP, RUN YOUR HAND IN THERE THROUGH THE CHIPS AND SHAVINGS AND STUFF, PULL IT OUT OF THAT.

Q. WHAT WAS THE SIZE OF THAT DUST THAT WAS CREATED BY YOUR INSULATION WORK?

A. PROBABLY ALL SIZES. BIGGER CHIPS, THE ONES THAT GET IN YOUR POCKETS.

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THE DUST IS, OF COURSE, EVERYWHERE, THE FINE DUST. THAT'S WHY YOU SHOOK YOUR COVERALLS BEFORE YOU TOOK THEM HOME.

Q. BY "FINE DUST," DO YOU MEAN DUST THAT LOOKS LIKE THAT WHICH IS CONTAINED IN EXHIBIT 1854, THIS HERE (INDICATING)?

A. THERE WOULD BE DUST LIKE THIS. YOU'D HAVE BIGGER CHIPS. YOU'D HAVE SMALLER. IT WOULD PROBABLY GO DOWN TO LIKE -- EXACTLY LIKE THIS, AND THEN EVEN FINER.

SOME, YOU MIGHT NOT EVEN BE ABLE TO SEE, BECAUSE IT'S SO FINE. JUST POWDER. THEY CAN GO AS FINE AS TALCUM POWDER. AND BIG CHIPS THAT -- YOU KNOW, IT DEPENDS ON YOUR SAW.

Q. SO YOU OBSERVED VISIBLY DUST THROUGHOUT THE STRUCTURE WHEN YOU WERE THERE?

A. IF YOU HAD AN INSULATOR WORKING IN THE STRUCTURE, THERE WAS DUST.

MR. BROWN: OKAY. LET ME SEE IF THAT'S WHERE I CAN QUIT.

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OKAY. AT THIS TIME, I'M OUT OF HERE.
THE COURT: JURORS, LET'S ALL DO THE SAME THING. LET'S TAKE A RECESS. LET'S TAKE A RECESS TILL FIVE MINUTES AFTER 11:00.
PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT FIVE AFTER 11:00.
(RECESS TAKEN FROM 10:40 TO 11:00 A.M.)
THE COURT: OKAY. WE ARE BACK ON THE RECORD.
AND I GATHER YOU'RE NEXT, MR. ROSSE.

2959

MR. ROSSE: I GUESS SO, YOUR HONOR.

CROSS-EXAMINATION

BY MR. ROSSE: Q. GOOD MORNING, MR. MONDT.
A. GOOD MORNING.
Q. IF YOU CAN'T HEAR ME AT ANY POINT, WILL YOU LET ME KNOW?
A. YES, I WILL.
Q. THANK YOU.
IF YOU HAVE ANY -- IF YOU DO NOT UNDERSTAND MY QUESTIONS, YOU'LL ALSO LET ME KNOW THAT?
A. I WILL.
Q. NOW, YOU'VE BEEN AN INSULATOR FOR A NUMBER OF YEARS?
A. THIRTY-FIVE AND A HALF YEARS.
Q. AND YOU WORKED ON A LOT OF DIFFERENT POWER PLANTS DURING YOUR CAREER?
A. YES, I HAVE.
Q. MOST OF YOUR CAREER, OR AT LEAST THE EARLY PART OF YOUR CAREER WAS SPENT WORKING FOR A COMPANY OTHER THAN METALCLAD?
A. MY FIRST 13 AND A HALF YEARS, I WORKED FOR OWENS-CORNING FIBERGLASS.
Q. YOU WORKED FOR A NUMBER OF DIFFERENT POWER PLANTS FOR OWENS-CORNING FIBERGLASS?
A. YES.
Q. DO THESE PLANTS START TO GET -- THE JOBS START GETTING CONFUSED IN YOUR MIND AT ALL?
A. THE TIMES, THE DATES THAT I WORKED ON THEM WAS

2960

MOST CONFUSING OF ALL.
Q. NOW, YOU WERE WORKING POWER PLANTS IN THE LATE 1950S, EARLY 1960S?
A. I STARTED IN THE TRADE THE SECOND DAY OF JANUARY, 1956, WITH THE LOS ALAMITOS STEAM -- IT WAS THE CALIFORNIA EDISON STEAM PLANT. VERY FIRST JOB.
Q. AND DURING THAT TIME PERIOD, YOU OBSERVED A CHANGE IN THE WAY THEY INSULATED BOILERS; IS THAT CORRECT?
A. YES.
Q. THEY WENT AWAY FROM THE HARD BLOCK INSULATION ON BOILERS AND STARTED USING A SOFTER INSULATION?
A. LIKE A MINERAL WOOL. YES, IT WAS LIKE SLAG, A METAL SLAG. IT WAS A FIBERGLASS.
NOT FIBERGLASS. IT WON'T RETAIN THE HEAT. YES A, GLASS-TYPE INSULATION.
Q. AND THAT DIDN'T CONTAIN ASBESTOS; CORRECT?
A. I'M NOT SURE IF IT DID OR NOT.
Q. THEY STARTED THIS PROCESS, OR THEY DISCONTINUED THE USE OF THE HARD BLOCK IN THE LATE '50S EARLY '60S?
A. EITHER THEY STARTED WORKING WITH LIKE A DETRICK BLOCK IN PROBABLY MAYBE THE MID-60'S. THAT I THINK IS THE FIRST TIME I STARTED SEEING SOMETHING OTHER THAN A HARD BLOCK, CALCIUM SILICATE BLOCK, HARD BLOCK.
Q. YOU WERE DEPOSED RECENTLY; IS THAT CORRECT?

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A. WHAT'S THAT?
Q. YOU WERE DEPOSED IN -- YOU WERE IN AN INFORMAL SETTING, NOT IN A COURTROOM, BUT YOU WERE IN A TYPE OF OFFICE, SMALL ROOM; PEOPLE ASKED YOU QUESTIONS; IT WAS TAKEN DOWN --
A. YES.
Q. -- BY THE REPORTER?
A. YES.
Q. YOU UNDERSTOOD AT THAT TIME THAT YOUR TESTIMONY WAS GOING TO BE PUT INTO A TRANSCRIPT FORM?
A. THAT'S CORRECT.
Q. AND YOU WERE GIVEN THE OPPORTUNITY TO REVIEW THAT TRANSCRIPT TO MAKE SURE THAT IT WAS ACCURATE?
A. THEY OFFERED ME ONE, BUT I DIDN'T TAKE ONE.
Q. YOU WERE OFFERED THE CHANCE TO REVIEW IT?
A. THAT'S CORRECT.
MR. BROWN: YOUR HONOR, COULD WE HAVE A SIDEBAR FOR A SECOND ON THIS DEPOSITION?
THE COURT: OKAY.
(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)
MR. ROSSE: Q. I'M GOING TO SHOW YOU A CONDENSED VERSION OF VOLUME 3 OF YOUR DEPOSITION.
NOW, THAT DEPOSITION TOOK PLACE OVER SEVERAL DAYS; CORRECT?
A. YES, IT DID.
Q. I'D LIKE TO REFER YOU TO PAGE 638, LINES 12 THROUGH 16.
ACTUALLY, I TAKE THAT BACK. PAGE 647.
MR. BROWN: LINES?
MR. ROSSE: LINES 4 THROUGH 13.
THE WITNESS: I DON'T THINK I HAVE A 647. I DON'T SEE A PAGE 647 ON THIS.
MR. ROSSE: Q. LOOK AT THE VERY BOTTOM IN THE LOWER RIGHT-HAND CORNER.
DOES IT SAY "PAGE 647?
A. 643, 644.
Q. LET ME JUST GIVE YOU THIS COPY.
A. 644.
Q. ACTUALLY, IF YOU LOOK AT THE TOP OF THAT COLUMN, BEFORE THE LINE, IT SAYS "PAGE 647."
DO YOU SEE THAT?
A. OH, OKAY. MM-HMM.
Q. THEN YOU CAN LOOK DOWN, BEGINNING ON LINE 4.
DO YOU SEE THAT, SIR?
A. (EXAMINING)
YES, I DO.
Q. THE QUESTION READS: "MY QUESTION TO YOU IS, IF YOU DIDN'T DO THE WORK PERSONALLY AND YOU DIDN'T SEE THE WORK BEING DONE, HOW DO YOU" --
MR. BROWN: YOUR HONOR, I HAVE AN OBJECTION TO THIS. THIS IS TIED TO BOILERS. I DIDN'T ASK ABOUT BOILERS. I MEAN, THERE'S OTHER PROBLEMS HERE WE CAN DISCUSS. NOT RELEVANT. BEYOND THE SCOPE OF DIRECT.
THE COURT: WHY DON'T YOU DO THIS. IF YOU WANT TO ASK HIM SOME QUESTIONS ABOUT THE SUBJECT MATTER OF THIS PASSAGE, WHY DON'T YOU ASK HIM DIRECTLY.
THEN IF YOU WANT TO READ, WE CAN GET TO THAT AT THAT POINT.
MR. ROSSE: Q. HAVE YOU HAD THE OPPORTUNITY TO

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REVIEW LINES 4 THROUGH 13?
A. I DON'T UNDERSTAND IT.
MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO THIS PROCEDURE. HE'S NOT REFRESHING HIS MEMORY. HE'S NOT IMPEACHING. I DON'T KNOW WHAT HE'S DOING.
THE COURT: WHY DON'T YOU -- MR. ROSSE, LET ME SUGGEST A WAY OF PROCEEDING. I JUST WANT TO EXPEDITE THIS.
WHY DON'T YOU JUST ASK HIM SUBSTANTIVE QUESTIONS THAT ARE COVERED BY THIS PASSAGE, IF YOU WANT, RIGHT NOW.
THEN IF YOU FEEL THE ANSWERS AREN'T THE SAME AS IN THE DEPOSITION, THEN WHY DON'T YOU READ THE DEPOSITION AT THAT POINT.
I'M JUST TRYING TO EXPEDITE THIS. THAT'S A SUGGESTION.
MR. ROSSE: Q. SIR, DOES THIS REFRESH YOUR RECOLLECTION THAT HARD BLOCK ON BOILERS WAS DISCONTINUED BETWEEN 1958 AND 1960?
MR. BROWN: OBJECTION. RELEVANCE AND 352.
THE COURT: OVERRULED.
YOU CAN ANSWER.
THE WITNESS: REPEAT THAT QUESTION.
DISCONTINUED TO 1960?
MR. ROSSE: Q. NO. NO.
DOES THIS REFRESH YOUR RECOLLECTION THAT YOU TESTIFIED THAT THE USE OF HARD BLOCK IN INSULATION OF BOILERS WAS DISCONTINUED IN 1958 OR 1960, IN THAT TIME PERIOD?
MR. BROWN: YOUR HONOR, A LATE INTERRUPTION

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AGAIN, BUT WOULD YOU LOOK AT LINE 22 ON PAGE 644, 22 THROUGH 24.
THE COURT: YOU WANT ME TO LOOK AT LINE --
MR. BROWN: 22 THROUGH 24 ON PAGE 644, WHICH IS WHY THIS IS IRRELEVANT.
THE COURT: LET ME LOOK AT THAT.
MR. BROWN: YOU COULD READ IT ALL THE WAY DOWN TO 646.
THE COURT: YOUR OBJECTION IS LACK OF FOUNDATION?
MR. BROWN: LACK OF FOUNDATION.
THE COURT: I THINK YOU ARE GOING TO HAVE TO PROCEED THIS WAY, MR. ROSSE. YOU ARE GOING TO HAVE TO ASK HIM THE QUESTIONS HERE NOW ON THIS SUBJECT.
THEN, WE'LL SEE WHERE IT GOES. ASK HIM, IF YOU DON'T MIND, WITHOUT REFERENCE TO THE DEPOSITION, OR YOU CAN JUST LEAVE THE SUBJECT.
BUT IN LIGHT OF THAT OBJECTION, I'M GOING TO HAVE TO SUSTAIN IT AT THIS POINT. IT'S WITHOUT PREJUDICE TO YOUR GOING INTO THIS AREA INITIALLY, WITHOUT REFERENCE TO THE DEPOSITION, AND THEN YOU MAY OR MAY NOT GET TO THE DEPOSITION.
MR. ROSSE: YOUR HONOR, I DON'T KNOW IF YOU WANT ME TO ARGUE THIS IN FRONT OF THE JURY.
THERE IS A PURPOSE FOR DOING THIS.
THE COURT: COME ON UP AND EXPLAIN IT TO ME. COME ON UP HERE. LET'S JUST DO IT RIGHT HERE.
I WANT TO GET BACK TO THE TESTIMONY.

2965

(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: AFTER A SIDEBAR, I UNDERSTAND YOU ARE WITHDRAWING THE LAST QUESTION, BUT YOU'RE GOING TO PROCEED ON THIS SUBJECT MATTER IN A DIFFERENT WAY?

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MR. ROSSE: YES, YOUR HONOR.
THE COURT: OKAY.
MR. ROSSE: Q. DURING THE LATE '50S AND EARLY '60S, YOU WORKED ON THE INSULATION OF BOILERS AT POWER PLANTS IN SOUTHERN CALIFORNIA?
A. I DID.
Q. AND IT WAS DURING THAT TIME FRAME WHEN YOU WERE INSULATING BOILERS THAT THEY DISCONTINUED THE USE OF HARD BLOCK ON THE INSULATION OF BOILERS IN SOUTHERN CALIFORNIA?
A. THAT'S CORRECT.
Q. YOU WORKED AT ORMOND IN JANUARY OF 1973?
A. YES.
Q. FOR APPROXIMATELY TWO MONTHS?
A. YES.
Q. ISN'T IT TRUE THAT THIS JOB STICKS OUT IN YOUR MIND BECAUSE IT WAS A NEW TYPE OF INSULATION BEING DONE AT THAT JOB?
A. THAT'S CORRECT.
Q. IN FACT, THEY USED GLASS INSULATION ON FUEL LINES, DIDN'T THEY?
A. THEY DID. IT WAS A MINERAL BLOCK, A MINERAL WOOL BLOCK, MINERAL WOOL.
THE PROCEDURE WAS TO TAKE A FLAT PIECE AND GLUE

2966

IT INTO THE METAL, LIKE IT WAS EXPLAINED UP HERE. AND THEN WHEN THE METAL WAS ALREADY ADHERED TO IT, AND THEN THEY PUT IT ON. ONE PROCESS.
THEY FOUND OUT THAT IT WOULD NOT HOLD UP --
DO YOU WANT ME TO CONTINUE?
Q. SURE.
A. -- WOULD NOT HOLD UP TO ABUSE. SO THEY STARTED PUTTING STRIPS OF HARD INSULATION IN THERE ON TOP, ONLY ON THE TOP, TO KEEP IT FROM BEING DESTROYED.
Q. WHILE YOU WERE THERE, THEY WERE USING ALL GLASS, AND IT WAS DURING THE TIME YOU WERE THERE THEY FOUND THIS WAS DESTROYED AS FAST AS YOU COULD PUT IT IN?
THE COURT: THAT'S TWO QUESTIONS.
MR. ROSSE: Q. DURING THE TIME YOU WERE AT ORMOND BEACH POWER PLANT, THEY WERE USING ALL GLASS IN THE FUEL LINES WITH METAL JACKETING?
A. NOT ALL GLASS. THEY PUT A STRIP ON THE TOP. THEY CUT OUT SEVERAL LAGS OF GLASS, PUT THE HARD INSULATION ON THE TOP, AND THEN, THAT WAY, IF ANYBODY STEPPED ON THE LINE, YOU KNOW, CRAWLED OVER IT, THEY WOULDN'T TOTALLY DESTROY THE LINE, YOU KNOW, THE INSULATION.
Q. SIR, I'D LIKE TO REFER YOU TO PAGE 633 OF YOUR DEPOSITION, BEGINNING ON LINE 19 AND CONTINUING TO 634, LINE 4.
HAVE YOU FOUND THAT PASSAGE, SIR?
A. YES.
Q. YOU WERE ASKED THE QUESTION --
MR. BROWN: COULD I HAVE A CHANCE TO READ IT,

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PLEASE.
NO OBJECTION.
THE COURT: YOU WANT TO READ THE QUESTIONS AND ANSWERS IN THAT AREA?
MR. ROSSE: YES.
THE COURT: YOU CAN DO IT. JUST SAY "QUESTION AND ANSWER" BEFORE, SO WE KNOW WHICH IS WHICH.
MR. ROSSE: "QUESTION: NOW, WHAT WAS THE NATURE OF THE WORK THAT YOU PERFORMED AT THIS SITE?
"ANSWER: I DID THE TURBINE, INSULATED THE

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TURBINE AND A LOT OF THAT FUEL OIL PIPING. AND
EVERYTHING OUTSIDE THE UNIT WAS METAL CLAD
WITH -- THE REASON I RECALL THE JOB, ONE OF THE
REASONS, IS BECAUSE IT WAS -- THEY USED ALL
GLASS, WHICH WAS VERY UNUSUAL FOR A POWERHOUSE,
WHICH DIDN'T HOLD UP REAL WELL BECAUSE IT WAS
BEING DESTROYED AS FAST AS WE COULD PUT IT IN ON
THE PIPES BECAUSE PEOPLE WOULD WALK ON THEM. BUT
IT WAS ALL GLASS ON THOSE PARTICULAR PIPES."

Q. DID I READ THAT CORRECTLY?

A. PROBABLY DID. I WAS PROBABLY REFERRING TO THE OVERHEADS, THE SMALLER PIPES THAT HAD -- WERE JUST SAGGING, THEY HAD BEEN DAMAGED SO MUCH.

Q. DOESN'T YOUR ANSWER SAY: "I DID THE TURBINE, INSULATED THE TURBINE AND LOT OF THAT FUEL OIL PIPING"?

A. THAT'S CORRECT.

Q. THEN YOU PROCEEDED TO TALK ABOUT USING ALL GLASS?

A. I THINK WHAT I WAS REFERRING TO IS THAT A LOT OF

2968

THE PIPES, THE SMALLER PIPES THAT WERE ON PIPE RACKS, AND THAT WAS OUTSIDE THE UNIT, LOOKING TOWARD THE UNIT -- I'M NOT SURE WHAT KIND OF STATION -- IT WAS ALREADY ONE YEAR OLD. IT LOOKED LIKE IT WAS FIVE OR SIX YEARS OLD ALREADY. I MEAN, IT LOOKED TOTALLY BEAT.

THAT'S WHAT ENCOURAGED THEM TO GO TO BLOCK. WHEN YOU STARTED DOING ANYTHING DOWN BELOW, WHEN WE DID FUEL OIL LINES, WE PUT THE BLOCK ON TOP. THE TURBINES WERE ALL HARD BLOCK.

Q. SO YOU WERE ASKED THE QUESTION: DID YOU RECALL THE USE OF ANY CALCIUM SILICATE ON THAT JOB; CORRECT?

MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO THAT.

THE WITNESS: I MEAN, I WAS ASKED THAT --

THE COURT: HOLD ON.

MR. BROWN: IF WE'RE GOING TO REFER TO THE DEPOSITION, REFER TO IT, NOT QUOTE IN THE QUESTION LIKE THAT OR JUST ASK THE SAME QUESTION.

THE COURT: IF THAT'S THE OBJECTION, IT'S OVERRULED.

YOU GO AHEAD.

MR. ROSSE: Q. WERE YOU ASKED THE QUESTION IF ANY CALCIUM SILICATE WAS USED ON THAT JOB AT YOUR DEPOSITION?

A. I DON'T RECALL IF I WAS ASKED THAT, TO THAT SPECIFIC THING. I DON'T RECALL.

Q. I REFER YOU TO PAGE 634 OF YOUR DEPOSITION, BEGINNING ON LINE 5.

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A. 634.

Q. CONTINUING THROUGH LINE 13.

A. WELL, I MEAN, JUST ASK -- IF YOU COULD ASK ME THE QUESTION INSTEAD OF ME TRYING TO READ ALL THIS, DECIPHER THIS.

Q. ACTUALLY, SIR, I'M WAITING FOR YOUR COUNSEL.

A. PARDON ME?

MR. BROWN: HE DOES HAVEN'T A COUNSEL.

MR. ROSSE: EXCUSE ME. YOU'RE RIGHT.

I'M PROPOSING TO READ LINES 5 THROUGH LINE 13.

THE COURT: LET'S SEE IF THERE'S AN OBJECTION.

MR. BROWN: NO OBJECTION.

THE COURT: YOU MAY READ.

MR. ROSSE: "QUESTION: DO YOU RECALL ANY CALCIUM SILICATE MATERIAL BEING USED ON THIS JOB?

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"ANSWER: THE TURBINE THAT I DID HAD CALCIUM SILICATE. AND THE PROCESS WAS THE SAME EXCEPT FOR THE FIRST TIME I HAD SEEN THIS NEW PROCESS -- THIS NEW GLASS THAT THEY USED, THIS FIBERGLASS CLOTH RATHER THAN ASBESTOS CLOTH. IN OTHER WORDS, IT WAS LIKE THEY WOULD PUT ON A BOAT OR SOMETHING. IT'S A GLASS WEAVE CLOTH."

THE WITNESS: THE FINISH ON THE TURBINE OR ANY KIND OF VALVE, UNDER USUAL DESIGN, I MEAN, IS SOMETHING THAT WASN'T TOTALLY ROUND. YOU HAD TO PUT CLOTH. USED TO BE ASBESTOS CLOTH.

AND THEN THEY STARTED COMING OUT WITH FIBERGLASS CLOTH, WHICH WAS LIKE YOU PUT ON A BOAT. IT'S CROSS-WEAVE MATERIAL.

2970

AND THEN YOU HAVE -- AFTER YOU GET THE TURBINE TOTALLY SMOOTHED OUT, FINISHED OFF, THEN YOU ADHERE IT WITH AN ADHESIVE, LAY THIS CLOTH ON IT, EITHER ASBESTOS CLOTH OR FIBERGLASS CLOTH.

I THINK THAT'S WHAT I WAS REFERRING TO.

MR. ROSSE: Q. BUT YOU WERE ASKED IF ANY CALCIUM SILICATE MATERIAL WAS USED ON THIS JOB DURING YOUR DEPOSITION. YOU DIDN'T MENTION THE USE OF ANY CALCIUM SILICATE ON PIPES, DID YOU?

A. I DON'T RECALL.

MR. BROWN: YOUR HONOR, THAT'S A MISLEADING QUESTION.

I'D LIKE TO POINT TO ANOTHER POINT IN THE DEPOSITION. MAYBE WE SHOULD HAVE A SIDEBAR.

THE COURT: WAIT A MINUTE. IT'S NOT AN OBJECTION, THAT THAT'S A MISLEADING QUESTION.

IF YOU WANT TO READ SOME OTHER PORTION OF THE DEPOSITION ON YOUR REDIRECT, YOU CAN DO THAT.

LET ME JUST HEAR WHAT THIS QUESTION WAS. WHY DON'T YOU JUST REPHRASE IT.

MR. ROSSE: Q. AT YOUR DEPOSITION, YOU WERE ASKED THE QUESTION: "DO YOU RECALL ANY CALCIUM SILICATE MATERIAL BEING USED ON THIS JOB?"

AND YOUR ANSWER AT THAT TIME DIDN'T MENTION ANY USE OF IT ON PIPING, DID IT?

MR. BROWN: YOUR HONOR, THAT'S NOT IN THE DEPOSITION.

MR. ROSSE: COULD WE HAVE --

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MR. BROWN: WE ALREADY READ THE QUESTION AND THE ANSWER. THERE'S ANOTHER QUESTION AND ANSWER.

THE COURT: THAT'S FINE. YOU CAN READ THAT WHEN IT GETS TO BE YOUR TURN.

IF THE OBJECTION TO THE QUESTION IS: "HOW DID HE ANSWER THAT QUESTION," THE JURY ALREADY HEARD HIS ANSWER TO THAT QUESTION.

MR. BROWN: ALL RIGHT, YOUR HONOR.

THE COURT: SO LET'S GO ON TO SOMETHING ELSE. IF THAT IS THE QUESTION. IF THERE'S SOMETHING ELSE SOMEWHERE ELSE, WE CAN DEAL WITH THAT AT THE TIME IT ARISES.

IF ALL YOU ARE ASKING IS THE ANSWER TO THE QUESTION WE JUST READ TO THE JURY, WE HAVE ALREADY HEARD THAT.

MR. ROSSE: MY QUESTION WAS IF HE RECALLED REFERRING TO ANY CALCIUM SILICATE ON THE PIPES AT THAT TIME.

THE COURT: AT WHAT TIME?

MR. ROSSE: AT THE TIME HE WAS ASKED THIS QUESTION IN HIS DEPOSITION.

THE COURT: IN ANSWER TO THAT QUESTION OR AT

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SOME OTHER PLACE IN THE DEPOSITION?
MR. ROSSE: AT ANY TIME IN HIS DEPOSITION.
YOUR HONOR, I WILL WITHDRAW IT.
THE COURT: OKAY.
MR. ROSSE: Q. YOU UNDERSTAND THAT THE USE OF ASBESTOS IN CALCIUM SILICATE INSULATION WAS DISCONTINUED AT SOME POINT?
A. I UNDERSTOOD THAT THEY -- I DON'T RECALL THE

2972

EXACT DATE, BUT FROM THE WORD THAT WAS GOING AROUND, THEY WEREN'T ALLOWED TO MANUFACTURE IT ANYMORE, BUT THEY WERE ENTITLED TO USE ANYTHING THAT HAD BEEN PREMANUFACTURED PRIOR TO THE DATE THAT THEY SAID "NO MORE ASBESTOS."
WHAT DATE THAT IS, I DON'T KNOW.
Q. ISN'T IT TRUE YOU DON'T KNOW WHETHER THE CALCIUM SILICATE USED AT ORMOND BEACH CONTAINED ASBESTOS OR NOT?
A. THE ONLY THING I CAN SAY THAT I RECALL, RIGHT ABOUT MID-70S, AROUND '75, I STARTED SEEING BOXES THAT SAID "CONTAINS NO ASBESTOS," BIG LETTERING, "CONTAINS NO ASBESTOS."
I DON'T RECALL THAT ON THAT JOB AT ORMOND BEACH. WHEN I WAS THERE, I DON'T RECALL SEEING ANY BOXES THAT SAID "NO ASBESTOS."
Q. DO YOU KNOW WHETHER THE CALCIUM SILICATE USED AT ORMOND BEACH CONTAINED ASBESTOS OR NOT?
A. I WOULD SAY THAT IT PROBABLY DID. WE HAD OUR MUDS AND OUR CALCIUM SILICATE BLOCK. AND PIPE COVERING WAS REALLY THE ONLY THING, OTHER THAN THE TYPE GLASS OR ASBESTOS CLOTH.
AND SOMETIMES WE HAD USED AMOSITE EXPANSION JOINTS THAT WAS ASBESTOS.
MR. ROSSE: YOUR HONOR, I PROPOSE TO READ PAGE 634, LINES 14 THROUGH 17.
THE WITNESS: I GET TOTALLY CONFUSED WHEN I START READING THIS. IT HAS -- WHAT IS IT, THE NUMBER?
THE COURT: HE'S NOT ASKING YOU A QUESTION. HE IS JUST SAYING HE WOULD LIKE TO READ THAT AT THIS POINT.

2973

I NEED TO ASK MR. BROWN WHETHER HE OBJECTS OR NOT. YOU ARE NOT BEING ASKED ANYTHING RIGHT NOW AT THIS POINT.
YOU WANT TO READ PAGE 634?
MR. ROSSE: 634, LINES 14 THROUGH 17.
THE COURT: OKAY. ANY OBJECTION?
MR. BROWN: NO. BUT I WOULD ALSO LIKE HIM TO READ PAGE 638.
THE COURT: SIX WHAT?
MR. BROWN: 638, LINES 17 THROUGH 19.
THE COURT: YOU CAN READ THAT ON YOUR REDIRECT. THAT'S NOT THE SAME QUESTION. OKAY. YOU CAN DO THAT ON YOUR TIME.
OKAY. ANY OBJECTION TO HIM READING WHAT HE WANTS TO READ? NO?
MR. BROWN: NO, YOUR HONOR.
THE COURT: YOU MAY READ.
MR. ROSSE: "QUESTION: DO YOU KNOW IF THE CALCIUM SILICATE MATERIAL THAT YOU USED ON THE TURBINE AT THIS JOBSITE CONTAINED ASBESTOS?
"ANSWER: NO, I DO NOT."
Q. NOW, YOU TALKED ABOUT THIS MATERIAL THAT METALCLAD INSTALLED IN THE PIPES.
THERE WAS A JACKETING WITH ROCK WOOL AND YOU SAID CALCIUM SILICATE GLUED INTO IT?

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A. IT WAS THE GLASS. THEIR PROCEDURE, THEY WERE JUST STARTING. I BELIEVE THIS MAY HAVE BEEN THE FIRST JOB THEY TRIED TO USE THIS GLASS INSIDE, OR MINERAL WOOL. THEY

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REFERRED TO IT AS A GLASS. REALLY, IT'S MINERAL WOOL OF SOME SORT.

IT WAS THE FIRST PROCEDURE THEY TRIED ON THE POWERHOUSE, AND I THINK PROBABLY A FAILURE, FOR THE FACT IS DESTRUCTION OF -- THE MATERIAL BEING DESTROYED. THAT'S WHEN THEY STARTED PUTTING THE BLOCK ON TOP, TO RETAIN THE STRENGTH OF IT.

Q. YOU WERE ON THE SITE FOR TWO MONTHS?

A. TWO MONTHS.

Q. DURING THAT TWO-MONTH PERIOD THAT THEY INSTALLED THIS STUFF, IT WAS DESTROYED AND THEY CHANGED THE PROCEDURE, ALL DURING THAT TWO-MONTH TIME FRAME?

A. I DON'T THINK THEY REMOVED ANYTHING OTHER THAN THE CONTRACTOR HAD REPLACED IT. IT WAS DAMAGED SO BAD, THEY FOUND RIGHT AWAY THEY NEEDED TO DO A DIFFERENT PROCESS. THAT'S WHEN THEY STARTED PUTTING HARD BLOCK ON TOP OF THE PIPES, SO IT WOULDN'T -- AND EQUIPMENT, SO IT WOULD NOT GET CRUSHED.

AND I THINK THAT PROCEDURE PROBABLY HAD FOUND OUT TO BE -- TO DO THAT ON THAT PARTICULAR JOB.

Q. THIS METAL-JACKETED INSULATION, THAT WAS MANUFACTURED OR PREPARED AT THE METALCLAD WAREHOUSE; CORRECT?

A. THAT'S CORRECT.

Q. SO ALL THIS ROCK WOOL, THIS CALCIUM SILICATE WAS GLUED INTO THE JACKETING AT THE METALCLAD WAREHOUSE?

A. NOT THE CALCIUM SILICATE, BECAUSE IT WOULDN'T STAY IN THERE. SO YOU HAD TO -- WHAT WE HAD TO DO, WHEN THE

2975

INSULATION COME OUT WITH THE JACKETING, WE WOULD TAKE MAYBE TWO STRIPS OF INSULATION OUT ON THE VERY TOP.

WHERE YOU PUT THE CALCIUM SILICATE, YOU MADE ROOM FOR THE NEW BLOCK, PUT IT IN THERE, THEN PUT THE METAL AROUND WHERE IT BELONGED.

AND THEN YOU HAD TO PUT A BAND ON THERE TO SECURE IT ONTO THE LINE, THE PIPELINE. THAT WAS DONE OUT ON THE JOB.

BUT THE PREMANUFACTURED MATERIAL WAS DONE IN THE SHOP AT METALCLAD, AND THEN BROUGHT IT OUT TO THE JOB. WE REMOVED THE GLASS MINERAL WOOL INSULATION, PUT IN YOUR HARD BLOCK, YOU KNOW, PULL IT TOGETHER AND BAND IT, TIGHTENED IT UP AND SECURED IT.

Q. YOU TALKED ABOUT THIS PROCESS DURING THE TIME YOU WERE DEPOSED, CORRECT, ABOUT THIS MANUFACTURING PROCESS?

A. I DON'T RECALL IF I HAD TALKED ABOUT IT. IF IT WAS ASKED -- IF IT WAS ASKED OF ME, I TOLD HIM WHAT I KNEW.

Q. COULD YOU REFER TO PAGE 642 OF YOUR DEPOSITION, BEGINNING ON LINE 19, LINE 19, CONTINUING THROUGH 643, LINE 2.

A. WHAT IS IT YOU WANT TO KNOW?

Q. DURING THE TIME OF YOUR JOBS, YOU TALKED -- YOU SAID -- THIS IS THE ANSWER:

"ANSWER: METALCLAD I BELIEVE MADE THEIR OWN INSULATION. THEY HAD GLUED ROCK WOOL INSIDE THE METAL JACKETING AND THAT'S HOW THAT WAS APPLIED, THEN IT WAS ALREADY STUCK TO IT. AND I -- AND THEY USED TO MANUFACTURE -- PUT THAT TOGETHER IN

2976

THEIR WAREHOUSE IN L.A."

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A. THAT'S CORRECT.
Q. AT THAT TIME, YOU DIDN'T TALK AT ALL ABOUT HAVING TO TAKE THIS APART AND PUT IN CALCIUM SILICATE?
MR. BROWN: ARGUMENTATIVE.
THE WITNESS: NO, BECAUSE --
MR. BROWN: ARGUMENTATIVE, YOUR HONOR.
THE COURT: SUSTAINED.
WE DON'T KNOW WHETHER HE WAS ASKED THAT QUESTION OR NOT.
SUSTAINED.
MR. ROSSE: Q. DID YOU YOURSELF WORK ON THE INSULATION OF THE MAIN STEAM LINES ON THAT JOB?
A. I DID NOT WORK ON THE MAIN STEAM LINES, THAT I RECALL. I KNOW I WORKED ON THE TURBINE. I WORKED OUT ON THE PUMP STATION AND THE FUEL OIL LINES.
Q. I THINK YOU ALREADY MENTIONED THAT THE CLOTH THEY USED AROUND THE TURBINE, THAT WAS GLASS CLOTH, NOT AN ASBESTOS CLOTH?
A. THERE COULD HAVE BEEN SOME ASBESTOS CLOTH. I THINK THAT'S THE FIRST TIME I STARTED SEEING GLASS CLOTH. BUT WE ALSO USED ASBESTOS CLOTH.
IN OTHER WORDS, THEY USED WHAT THEY COULD GET. SO IF THEY NEEDED A LOT OF CLOTH, THEY STARTED BRINGING IN FIBERGLASS CLOTH. IF IT WASN'T AVAILABLE, THEY USED ASBESTOS CLOTH UNTIL IT WAS ALL GONE AND THERE WAS NO MORE COULD BE MANUFACTURED OR SOLD, I GUESS. I DON'T KNOW.
Q. WOULD YOU AGREE THAT THIS WAS A SOMEWHAT UNUSUAL

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JOB, THAT THIS WAS THE FIRST TIME YOU SAW FIBERGLASS CLOTH USED? IT WAS THE FIRST TIME YOU SAW ROCK WOOL AND METAL JACKETING ON PIPE?
A. I BELIEVE IT WAS THE FIRST TIME THAT PROCEDURE WAS DONE. I BELIEVE IT WAS.
MR. ROSSE: THANK YOU, SIR.
THE WITNESS: YOU'RE WELCOME.
MS. CHABER: ANYTHING FURTHER FOR MR. MONDT BY ANYBODY? ANY TAKERS?
MR. BROWN: JUST ONE THING, YOUR HONOR.
THE COURT: OKAY.

REDIRECT EXAMINATION

BY MR. BROWN: Q. READING FROM PAGE 638 OF THE DEPOSITION THAT I REFERRED TO, LINES 17 THROUGH 20.
"QUESTION" --
THE COURT: YOU WANT --
MR. ROSSE: OBJECTION. HEARSAY.
MR. BROWN: IT'S THE PART I REFERRED YOU TO EARLIER.
THE COURT: LET ME RULE ON THE OBJECTION. I NEED TO LOOK AT IT.
MR. BROWN: 638, 17.
THE COURT: LET ME ASK YOU A QUESTION. WHEN YOU GAVE THAT ANSWER, WERE YOU BASING THAT ANSWER ON WHAT SOMEBODY ELSE TOLD YOU OR WERE YOU BASING IT ON WHAT YOU SAW YOURSELF OR WERE YOU BASING IT, FOR EXAMPLE, ON SOMETHING ELSE? DON'T TELL US WHAT THE ANSWER WAS. JUST TELL US WHAT

2978

IS BASIS OF THE ANSWER?
THE WITNESS: WHICH ONE ARE YOU TALKING ABOUT?
THE COURT: LOOK AT PAGE 638, LINE 17 THROUGH 19. DON'T READ IT OUT LOUD. JUST READ IT TO YOURSELF.
AND MY QUESTION TO YOU, AFTER YOU READ YOUR OWN ANSWER IS: DID YOU BASE THAT ANSWER ON WHAT SOMEBODY TOLD

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YOU, ON WHAT YOU SAW OR ON SOMETHING ELSE?
WHAT DID YOU BASE YOUR ANSWER ON?
THE WITNESS: I'M BASING THAT QUESTION ON THE FACT --
MR. BROWN: WAIT A MINUTE. ALL RIGHT.
THE COURT: DON'T TELL US WHAT THE ANSWER IS.
ALL I WANT TO KNOW IS WHAT YOU ARE BASING IT ON?
CAN YOU TELL ME THAT WITHOUT DISCLOSING THE ANSWER?
MR. ROSSE: IF HE HAD EXPERIENCE?
THE COURT: WHAT?
MR. ROSSE: HIS EXPERIENCE.
THE COURT: THAT'S A POSSIBILITY.
CAN YOU TELL US, IN SHORT, WHAT YOU ARE BASING THAT ANSWER ON?
IS THAT A DIFFICULT QUESTION?
THE WITNESS: LET ME READ IT AGAIN. SOMETIMES WHEN YOU'RE DOING A DEPOSITION, THERE'S A LOT OF PEOPLE ASKING YOU DIFFERENT QUESTIONS AND IT COULD COME OUT DIFFERENT.
THE COURT: I JUST WANT TO KNOW WHAT YOU ARE BASING YOUR ANSWER ON IN ORDER TO DETERMINE WHETHER WE SHOULD READ THE ANSWER OR NOT TO THE JURY.

2979

LET ME JUST SAY, MR. BROWN, WHY DIDN'T YOU ASK THESE QUESTIONS INSTEAD OF ME?
I NEED TO KNOW THE FOUNDATION FOR THIS ANSWER. YOU ASK IT ANY WAY YOU WANT TO ASK IT. YOU'RE THE ONE THAT WANTS TO READ IT.
I NEED TO KNOW A LITTLE MORE ON THE FOUNDATION BEFORE I RULE.
MR. BROWN: YOUR HONOR, THERE IS ANOTHER GROUND FOR READING IT, IN ADDITION TO WHAT YOU WERE SUGGESTING. IT'S A POTENTIAL PROBLEM.
THE COURT: WHY DON'T DO --
MR. BROWN: THIS PUTS WHAT WAS READ IN CONTEXT.
THE COURT: WHY DON'T YOU DO THIS FIRST, BECAUSE THIS MAY ELIMINATE THE NEED TO GET TO THAT ISSUE.
MR. BROWN: ALL RIGHT.
Q. IN TERMS OF WHAT INSULATION WAS BEING USED WITH RESPECT TO THE PIPES LEADING UP TO THE BOILER, HOW DID YOU KNOW IN THE JOB THERE AT ORMOND BEACH WHAT KIND OF INSULATION WAS BEING USED?
A. ALL THE THINGS THAT I WORKED ON, I KNOW EXACTLY WHAT WAS USED, WHAT I DONE.
Q. SURE.
A. NOW THE MAIN STEAM LINES, I DON'T BELIEVE I EVER SEEN ANY MAIN --
MR. ROSSE: OBJECTION, YOUR HONOR. NONRESPONSIVE.
THE COURT: HE KNOWS WHAT HE WORKED ON, AND I THINK HE'S JUST TELLING US HE DIDN'T WORK ON MAIN STEAM

2980

LINES.
MR. BROWN: I DON'T KNOW.
THE COURT: IS WHAT THAT YOU ARE SAYING?
THE WITNESS: I DID NOT WORK ON MAIN STEAM LINES, NOT THAT I CAN REMEMBER THAT I WORKED ON MAIN STEAM LINES.
THE COURT: HOLD ON. I'M GOING TO OVERRULE THE OBJECTION. ALL HE WAS TELLING US IS WHAT HE DIDN'T WORK ON.
MR. ROSSE: THAT'S NOT WHAT HE WAS SAYING. HE WAS STARTING TO TELL US WHAT WAS USED THERE.
THE COURT: NO, HE WASN'T. THAT'S NOT WHAT HE

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JUST SAID.
WHAT YOU JUST SAID, AS I UNDERSTOOD IT, YOU NEVER YOURSELF WORKED ON THE MAIN STEAM LINES?
THE WITNESS: ON THAT PARTICULAR JOB, I DON'T BELIEVE I DID.
THE COURT: OKAY. I'M GOING TO LEAVE THAT IN THE RECORD.
MR. BROWN: Q. WHERE WERE THE MAIN STEAM LINES IN RELATIONSHIP TO WHERE YOU WERE WORKING?
A. THE MAIN STEAM LINES COME FROM, USUALLY THE TURBINE LEVEL, JUST BELOW THE TURBINE LEVEL, ALL THE WAY TO THE BOILER, ALL THE WAY UP TO THE BOILER.
Q. YOU WERE WORKING -- YOU WERE WORKING GENERALLY IN THAT AREA?
A. DOWN BELOW, YES.
Q. COULD YOU SEE THEM -- DID YOU SEE THE WORK BEING DONE?

2981

A. RIGHT NOW, I CAN'T RECALL, WHERE YOU'RE JUST WATCHING THEM SPECIFICALLY.
Q. DID YOU SEE THE MATERIAL BEING BROUGHT ON THE JOB FOR THE INSULATION OF THE PIPES? THAT IS, NOT NECESSARILY SEE THE TRUCK DRIVE IN, BUT DID YOU SEE INSULATION WHERE IT WAS STORED BEFORE IT WAS ACTUALLY INSTALLED?
A. I DON'T RECALL THAT.
Q. ALL RIGHT. DO YOU BELIEVE YOU KNOW WHAT THE INSULATION WAS ON THE MAIN STEAM LINES?
MR. ROSSE: OBJECTION, YOUR HONOR. LACKS FOUNDATION. RELEVANCE.
THE COURT: DOES HE KNOW. YOU DON'T HAVE TO TELL US WHAT IT IS. DON'T TELL US WHAT YOU KNOW. JUST ANSWER THE QUESTION: DO YOU BELIEVE YOU KNOW? BUT DON'T TELL US WHAT YOU KNOW. THAT IS EITHER A YES OR NO.
THE WITNESS: I BELIEVE I KNOW.
MR. BROWN: Q. AND WHAT IS THE REASON -- WHAT'S THE FOUNDATION -- WRONG WORD -- WHAT'S THE SOURCE OF YOUR KNOWLEDGE?
THE COURT: NOW, LOOK. DON'T TELL US WHAT YOUR KNOWLEDGE IS.
IN ANSWER TO THIS QUESTION, DON'T TELL US WHAT THE STEAM LINES ARE MADE OF. JUST TELL US HOW YOU KNOW. WHY DO YOU THINK YOU KNOW THE ANSWER TO THAT QUESTION, WITHOUT TELLING US WHAT THE ANSWER TO THE QUESTION IS? WE DON'T WANT TO KNOW WHAT YOU THINK THEY'RE MADE OUT OF. WE JUST WANT TO KNOW THE BASIS OF YOUR VIEW THAT YOU KNOW THE ANSWER TO THAT QUESTION.

2982

DO YOU UNDERSTAND THE DISTINCTION THERE?
THE WITNESS: I THINK SO.
THE COURT: OKAY.
THE WITNESS: THE LINES ARE RUNNING 1,000 DEGREES OR BETTER. YOU USUALLY HAVE HIGH-TEMP BLOCK ON IT. YOU CAN'T USE JUST ANY MATERIAL ON IT. IT HAS TO BE SOMETHING THAT WILL RETAIN 1,000 DEGREES OR PLUS DEGREES. IT REQUIRES A HIGH-TEMP BLOCK OR SOMETHING VERY HIGH-TEMP.
MR. BROWN: Q. SO THAT'S WHAT YOU USED ON --
A. THE TURBINE.
Q. RIGHT. THAT'S ASBESTOS-CONTAINING, ISN'T IT?
A. I WOULD SAY THAT'S RIGHT. IT HAD ASBESTOS AT THAT TIME. IT WOULD HAVE ASBESTOS IN IT --
MR. BROWN: THANK YOU.
THE WITNESS: -- AT THAT TIME FRAME.
MR. BROWN: THAT'S ALL THAT I HAVE.

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THE COURT: ANYTHING FURTHER FOR MR. MONDT?
MR. ROSSE? ANYBODY ELSE?
MR. ROSSE: YES, I DO, YOUR HONOR.
PAGE 638, LINES 21 THROUGH 639, LINE 2.
MR. BROWN: RELEVANCE, YOUR HONOR.
THE COURT: RELEVANCE. IF THAT IS THE OBJECTION, IT'S OVERRULED.
YOU CAN READ.

RECROSS-EXAMINATION

MR. ROSSE: "QUESTION: DO YOU KNOW WHO MANUFACTURED ANY OF THAT CALCIUM SILICATE PIPE

2983

COVERING?"
ACTUALLY, IN ORDER TO PUT IT IN CONTEXT, I GUESS I HAVE TO GO BACK TO LINE 19.
THE COURT: LINE 19 IS AN ANSWER.
MR. ROSSE: YOU ARE RIGHT. LINE 17.
THE COURT: ALL RIGHT.
IS THERE ANY OBJECTION? HE WANTS TO GO BACK TO LINE 17. NO OBJECTION?
MR. BROWN: NO.
THE COURT: OKAY. YOU CAN GO AHEAD.
MR. ROSSE: "QUESTION: DID YOU SEE WHAT SORT OF MATERIALS WERE USED TO INSULATE THE PIPES LEADING UP TO THE BOILER?
"ANSWER: THE -- ALL THE MAIN STEAMS ARE DONE WITH CAL. SIL., CALCIUM SILICATE.
"QUESTION: DO YOU KNOW WHO MANUFACTURED ANY OF THAT CALCIUM SILICATE PIPE COVERING?
"ANSWER: I DO NOT.
"QUESTION: AND YOU DON'T KNOW ONE WAY OR ANOTHER WHETHER THAT MATERIAL STILL HAD ASBESTOS IN IT BY THAT TIME?
"ANSWER: I DO NOT."
MR. ROSSE: NO FURTHER QUESTIONS.
THE COURT: ANYTHING FURTHER BY ANYBODY FOR MR. MONDT?
OKAY. HEARING NOTHING, YOU MAY STEP DOWN, MR. MONDT.
THE WITNESS: OKAY.

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THE COURT: WHY DON'T YOU LEAVE THAT MATERIAL THERE. EITHER COUNSEL OR TATSUO WILL GET IT.
THAT'S FINE. THEY WILL PICK IT UP.
THE WITNESS: AM I THROUGH?
THE COURT: YOU'RE THROUGH.
MR. MONDT ASKED ME IF HE IS THROUGH.
MAY I EXCUSE THE WITNESS?
MR. BROWN: HE IS EXCUSED.
MR. ROSSE: YES, YOUR HONOR.
MR. BROWN: HE'S EXCUSED.
THE COURT: YOU ARE EXCUSED.
(WITNESS EXCUSED)
THE COURT: WHO IS OUR NEXT WITNESS?
MR. BROWN: THANK YOU VERY MUCH.
MR. LEONARD WHITELEY.
THE CLERK: PLEASE STAND RIGHT HERE AND RAISE YOUR RIGHT HAND. THIS WAY, PLEASE.

TESTIMONY OF
LEONARD WHITELEY,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

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THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: LEONARD WHITELEY.
MR. BROWN: PLEASE SPELL YOUR LAST NAME.
THE WITNESS: W-H-I-T-E-L-E-Y.
THE CLERK: IS LEONARD L-E-O-N-A-R-D?
THE WITNESS: L-E-O-N-A-R-D.
THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

2985

DIRECT EXAMINATION

BY MR. BROWN: Q. MR. WHITELEY, ARE YOU ONE OF THE PLAINTIFFS IN THIS CASE?

A. YES, SIR.

Q. AND ARE YOU MARRIED TO THE OTHER PLAINTIFF?

A. YES, SIR.

Q. LESLIE WHITELEY?

A. YES, SIR.

Q. MR. WHITELEY, I'M JUST GOING TO ASK YOU QUESTIONS, A FEW QUESTIONS HERE BEFORE NOON ABOUT YOUR LIFE BEFORE YOU MET HER.

AND I'LL START, I THINK, WITH: WHAT YEAR YOU WERE BORN AND WHERE?

A. I WAS BORN IN 1958 IN CARTHAGE, MISSOURI.

Q. HOW LONG DID YOU LIVE OUTSIDE OF CALIFORNIA?

A. I THINK IT WAS A COUPLE OF YEARS, A COUPLE OF -- FOUR YEARS, WHEN MY MOM MOVED TO CALIFORNIA.

Q. YOU WERE ABOUT FOUR OR FIVE YEARS OLD?

A. THAT'S WHY I DON'T REALLY KNOW EXACT DATES, BECAUSE I WAS LITTLE.

Q. WHERE DID YOU MOVE TO? WHERE DID YOUR MOTHER MOVE TO?

A. VENTURA, CALIFORNIA.

Q. AND HAVE YOU LIVED IN THAT VENTURA AREA RIGHT UP TO NOW?

A. YES, SIR. WELL, VENTURA AND OJAI.

Q. WELL, OJAI. I MEAN, OJAI IS IN THE VENTURA AREA?

A. YES, IN VENTURA COUNTY.

2986

Q. ABOUT HOW FAR AWAY FROM VENTURA?

A. ABOUT 14 MILES.

Q. IT'S INLAND FROM THE BEACH?

A. YES.

Q. VENTURA IS RIGHT ON THE BEACH?

A. RIGHT.

Q. DID YOU GO TO SCHOOL LOCALLY?

A. YES.

Q. WHERE DID YOU GO TO SCHOOL?

START WITH GRAMMAR SCHOOL. THEN GO TO JUROR HIGH AND THEN GO TO HIGH SCHOOL.

A. I WENT TO LINCOLN ELEMENTARY, WASHINGTON ELEMENTARY. I WENT TO CABRILLO JUNIOR HIGH SCHOOL. THEN I TRANSFERRED TO MAR VISTA HIGH.

Q. DID YOUR WIFE LESLIE ATTEND ANY OF THOSE SCHOOLS WHILE YOU WERE THERE?

A. SHE ATTENDED CABRILLO JUNIOR HIGH.

Q. NOW, HOW MUCH OLDER, IF YOU ARE OLDER THAN YOUR WIFE, ARE YOU?

A. ABOUT A YEAR.

Q. WERE YOU THERE AT THE SAME TIME AT CABRILLO?

A. YES.

Q. DID YOU KNOW WHO SHE WAS?

A. YEAH. JUST VAGUELY. THERE WASN'T -- I KNEW OF HER.

Q. WHAT GRADES WERE THE JUNIOR HIGH IN VENTURA?

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A. THEY WERE SEVENTH THROUGH NINTH.
Q. THREE YEARS?

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A. THREE YEARS.
Q. YOU WERE ONE YEAR AHEAD OF HER?
A. I WAS -- I THINK I WAS IN THE SAME GRADE YEAR.
Q. SAME YEAR?
A. I WAS HELD BACK THE FIRST GRADE, SO I WAS --
Q. SAME YEAR?
A. YEAH. BUT I REALLY DIDN'T KNOW HER.
Q. LOOKING BACK, YOU CAN RECALL HER, BUT YOU DIDN'T REALLY KNOW HER?
A. YES, SIR.
Q. OKAY. WHEN DID YOU GRADUATE FROM HIGH SCHOOL?
A. IT WOULD BE '76. I'M GUESSING. I'M NOT VERY GOOD AT DATES.
Q. 1976?
A. SOMETHING LIKE THAT, YEAH.
Q. WHAT IS YOUR OCCUPATION TODAY; WHAT DO YOU DO?
A. I'M A TRUCK DRIVER.
Q. HOW LONG HAVE YOU BEEN DOING THAT?
A. I'VE BEEN DOING THAT EVER SINCE I KNEW LESLIE.
Q. WE NEED A YEAR.
A. 1983.
Q. AND BEFORE THAT, WERE YOU DOING IT?
A. NO.
Q. WHAT DID YOU DO?
A. EXCUSE ME. I HAD BEFORE, IN THE PAST, DROVE A TRUCK ON A FARM WHEN I WAS YOUNGER.
Q. WHEN YOU SAY YOU ARE TRUCK DRIVER TODAY, NOW, WHAT KIND OF TRUCK ARE YOU DRIVING?

2988

A. I DRIVE A READY-MIX TRUCK.
Q. THAT'S A TRUCK THAT'S GOT A BIG MIXING BOWL UP THERE, ON TOP, THAT TURNS AS YOU DRIVE?
A. YES. IT'S A CONCRETE TRUCK.
Q. YOU DELIVER PREMIXED CEMENTS TO JOBSITES?
A. YES, READY-MIX.
Q. WHEN DID YOU START TO DO THAT?
A. IN 1983.
Q. AND WAS THAT ABOUT THE TIME YOU MET LESLIE?
A. YES.
Q. OKAY. SO PRIOR TO 1983, OTHER THAN JUST A RECOLLECTION THAT YOU REMEMBER HER FROM JUNIOR HIGH SCHOOL, YOU DIDN'T HAVE ANY CONTACT WITH HER?
A. NO.
Q. ALL RIGHT. FROM THE TIME YOU GRADUATED FROM HIGH SCHOOL TO 1983, JUST VERY GENERALLY, WHAT KIND OF WORK DID YOU DO?
A. I WORKED ON A FARM. AND I DID FENCING CONSTRUCTION. I WAS IN CONSTRUCTION, DIFFERENT TRADES IN CONSTRUCTION.
Q. WAS THAT IN THE VENTURA AREA?
A. I WORKED IN VENTURA. I ALSO WORKED IN WASHINGTON.
Q. THE STATE OF WASHINGTON?
A. STATE OF WASHINGTON.
Q. OKAY. NOW, WHEN YOU MET LESLIE, WHAT WAS THE OCCASION? WHAT WERE THE CIRCUMSTANCES?
A. WE WERE IN -- I WAS IN A TRUCK DRIVING COURSE AT

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OXNARD COLLEGE.
Q. AND --

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A. I WAS TRYING -- I WAS TRYING TO ACHIEVE A CLASS-1 LICENSE. THEY OFFERED A CLASS-1 COURSE.
Q. WAS LESLIE IN THAT SAME COURSE?
A. YES, SIR.
Q. HOW LONG DID THAT COURSE LAST?
A. I WENT TO SUMMER SCHOOL. THEY OFFERED A SUMMER COURSE. THAT'S WHERE I MET HER.
AND THEN WE OPTED TO GO INTO THE FULL SEMESTER COURSE. WE DIDN'T GET OUR CLASS-1 LICENSE IN THE SUMMER COURSE, BUT WE GOT LIKE HALFWAY THROUGH IT. SO WE OPTED TO GO INTO THE NEXT CLASS.
Q. YOU BOTH GOT THE LICENSE?
A. YES, SIR.
Q. DID LESLIE DO SOME PROFESSIONAL TRUCK DRIVING?
A. YES, SIR.
Q. WHAT DID SHE DO?
A. SHE HAULED STEEL ON A FLATBED.
Q. HOW LONG DID SHE DO THAT?
A. IT WAS A FEW MONTHS.
Q. WHAT DID LESLIE DO IN TERMS OF WORK BETWEEN WHEN YOU MET HER AND WHEN YOU GOT MARRIED?
A. I'M NOT REALLY SURE. SHE SAID SHE DID ALL SORTS OF DIFFERENT THINGS, HOUSEKEEPING, YOU KNOW, FOR LIKE HOTELS AND MOTELS AND THINGS LIKE THAT.
SHE WORKED AT SOME NURSERIES IS WHAT I REMEMBER HER MAKING REFERENCE TO.

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Q. BETWEEN WHEN YOU MET HER AND WHEN YOU MARRIED HER, I ASSUME YOU HAD BEGAN TO ESTABLISH SOME KIND OF RELATIONSHIP THAT LED TO MARRIAGE?
A. YES, SIR.
Q. OKAY. AT SOME POINT IN THERE, DID YOU BEGIN TO LIVE WITH HER?
A. YEAH. YES.
Q. WHERE WAS THAT?
A. THAT WAS IN VENTURA.
Q. WAS SOMEBODY ELSE LIVING THERE TOO?
A. YES, I WAS LIVING AT MY MOM'S HOUSE.
Q. THE THREE OF YOU WERE LIVING TOGETHER?
A. YES, SIR.
Q. HOW LONG DID THAT LAST?
A. IT WAS -- WE WENT TO SUMMER SCHOOL. WE STARTED KIND OF LIVING TOGETHER SHORTLY AFTER THAT OR RIGHT ABOUT THAT SAME TIME.
IT WAS IN THAT TIME FRAME. IT WAS A COUPLE OF MONTHS.
Q. OKAY.
A. IT WAS A FEW MONTHS.
Q. NOW, SHE HAD BEEN MARRIED BEFORE YOU MET HER?
A. YES.
Q. THERE HAS BEEN SOME REFERENCE TO HER SECOND HUSBAND, WHO WAS WESLEY EMHOFF.
DID YOU EVER MEET HIM?
A. I HAVE SEEN HIM. YOU KNOW, I'VE MET HIM AT A DISTANCE, NOT REALLY UP CLOSE TO SHAKE HIS HAND. I KNOW WHO

2991

HE IS.
Q. DID YOU EVER MEET DEAN MOORE, HER FIRST HUSBAND?
A. NO.
Q. WHEN DID YOU AND SHE DECIDE TO GET MARRIED?
A. ABOUT THE TIME WE STARTED LIVING TOGETHER.
Q. OKAY. AND WHAT WAS THE YEAR OF YOUR MARRIAGE?
A. I THINK IT WAS '86. IT WAS '86.

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Q. SHE IS NOT LISTENING. ALL RIGHT.
DID YOU AND SHE DECIDE TO HAVE CHILDREN?
A. YES.
Q. AND HOW MANY HAVE YOU HAD?
A. WE HAD FOUR.
MR. BROWN: OKAY. LET ME SHOW YOU SOME PICTURES HERE.
I'D LIKE TO MARK THESE AS PLAINTIFFS' NEXT IN ORDER FOR IDENTIFICATION. I HAVE AN EXTRA SET HERE FOR YOUR HONOR.
THE CLERK: PLAINTIFFS' EXHIBIT 1920.
MR. BROWN: AND IT'S A SET OF 11 PHOTOGRAPHS OF LESLIE'S CHILDREN AND SOME OTHER CHILDREN.
THE COURT: DO YOU WANT TO DO IT A THROUGH K, 1920-A THROUGH K?
MR. BROWN: YES, THAT WOULD BE A GOOD IDEA. THEY'RE ALL IN THE SAME ORDER.
(DOCUMENTS MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT #S 1920-A THROUGH K)

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MR. BROWN: WHAT DID YOU SAY THAT NUMBER WAS AGAIN?
THE COURT: 1920-A THROUGH K.
MR. BROWN: OKAY.
(TO THE CLERK:) COULD I HAVE YOUR SET? THEY'RE STAPLED.
Q. WOULD YOU TELL US, IS THAT LESLIE ON THE FIRST PICTURE THERE?
A. YES, SIR.
Q. ABOUT HOW OLD IS SHE THERE?
A. I THINK SHE IS IN HIGH SCHOOL.
Q. OKAY. AND THE SECOND PICTURE, IS THAT LESLIE?
A. YES.
Q. AND WHO IS THAT WITH HER?
A. THAT'S HER MOTHER.
Q. AND DO YOU KNOW ABOUT WHAT YEAR THAT WAS TAKEN?
A. IT SAYS HERE "'72 OR '76."
Q. AND THE NEXT PICTURE, WHO IS THAT WITH LESLIE?
A. THIS IS HER SISTER CHRIS.
Q. LESLIE ON THE RIGHT AND CHRIS IS ON THE LEFT?
A. YES, SIR.
Q. THE NEXT PICTURE IS LESLIE.
DO YOU KNOW THE DATE THAT THIS PICTURE WAS TAKEN?
A. IT SAYS HERE IT WAS '76.
Q. HOW ABOUT THE NEXT PICTURE; DO YOU KNOW WHEN THAT PICTURE WAS TAKEN?
IF YOU DON'T, IT'S OKAY. DON'T JUST READ IT, WHAT IT SAYS HERE.

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A. I DON'T REALLY KNOW, BUT I WOULD -- IT SAYS IT'S '76.
Q. ALL RIGHT. NOW, THE NEXT THREE PICTURES, YOU HAVE TO BE ABLE TO IDENTIFY. WHAT ARE THEY?
A. THEY'RE OUR WEDDING PICTURES.
Q. THERE'S THREE OF THEM THERE?
A. YES.
Q. AND WHAT WAS THE DATE THAT THOSE WERE TAKEN?
A. MAY 3RD, '86, 1986.
Q. DID YOU READ THAT ON THE PICTURE?
WHAT ARE YOU DOING IN THAT PICTURE?
A. WE'RE CUTTING OUR WEDDING CAKE.

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Q. NOW WE COME TO THE NEXT PICTURES. THE NEXT SEVERAL PICTURES ALL LOOK LIKE THEY HAVE TO DO WITH SOME CHILDREN.
WHO ARE THE TWO CHILDREN IN THE NEXT PICTURE?
A. THAT'S MY YOUNGER BOY, CARL, AND ELIZABETH AND THEY'RE --.
Q. CARL -- I'M SORRY.
A. AND THEY'RE OUT FRONT OF THE HOUSE BLOWING BUBBLES.
Q. HOW OLD IS CARL IN THIS PICTURE?
A. HE'S THREE.
Q. WAS THIS PICTURE TAKEN RECENTLY?
A. YES. IT'S FAIRLY RECENT.
Q. YOU SAID THE YOUNG LADY THERE WAS ELIZABETH?
A. THAT'S ELIZABETH.
Q. WHAT ARE THEY DOING THERE?

2994

A. THEY'RE PLAYING WITH BUBBLES OUT FRONT.
Q. THIS IS TAKEN AT YOUR HOUSE?
A. YES.
Q. AND THEN THE NEXT PICTURE, A YOUNG LAD THERE WITH A CUB SCOUT UNIFORM?
A. THAT'S TREVOR.
Q. HE'S YOUR SECOND SON DOWN?
A. YES.
Q. NO. 2 SON?
A. YES.
Q. HOW OLD IS HE IN THAT PICTURE?
A. HE'S NINE.
Q. AND HOW RECENTLY WAS THAT TAKEN?
A. THAT WAS FAIRLY RECENT, IF I RECALL RIGHT. I THINK IT WAS THIS YEAR.
Q. NOW, IT LOOKS LIKE THE NEXT PICTURE MIGHT BE THE WHOLE GROUP.
A. THERE IS ALSO TROY IN THE BACKGROUND IN THE PICTURE.
Q. WHERE IS HE?
A. IN THE TRUCK. YOU CAN SEE HIM IN THE WINDOW. LOOKS LIKE TROY.
Q. THE NEXT PICTURE HAS TROY, TREVOR, CARL, AND ELIZABETH?
A. YES, SIR.
Q. AND THERE IS A PICTURE OF A PARADE.
WHEN WAS THAT TAKEN?
A. THAT WAS TAKEN IN '98.

2995

Q. WAS LESLIE AT THIS PARADE?
A. YES, SIR.
Q. HAD SHE ALREADY BEEN DIAGNOSED WITH LUNG CANCER?
A. YES.
Q. HOW WAS SHE ABLE TO GET THERE?
A. WE TOOK HER IN A WHEELCHAIR.
Q. AND ARE SOME OF YOUR CHILDREN PICTURED IN THE PARADE?
A. YEAH, I THINK SO. YES.
THIS WAS THE CHURCH -- THIS WAS THE CHURCH GROUP THAT THEY WENT TO IN SUMMER SCHOOL, AND THE CHURCH WENT INTO THE PARADE.
Q. THE LAST PICTURE IS A LITTLE GUY WHO IS NOT FULLY CLOTHED, AND IT LOOKS LIKE HE'S DRIVING A TRACTOR.
WHO IS THAT?
A. THAT'S CARL.
MR. BROWN: I MOVE TO HAVE THESE ADMITTED, YOUR

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HONOR.
MS. MASON: NO OBJECTION.
THE COURT: THEY ARE RECEIVED. 1920-A THROUGH K ARE RECEIVED.
(DOCUMENTS MORE PARTICULARLY LISTED IN THE INDEX RECEIVED IN EVIDENCE AS PLAINTIFFS' EXHIBIT #S 1920-A THROUGH K)
MR. BROWN: YOUR HONOR, IF WE HAVE TIME, JUST LET THE JURY PASS THAT AMONG THEM BEFORE THEY GO TO LUNCH, AND THEN GO TO LUNCH.

2996

THE COURT: ANY OBJECTION?
MS. MASON: NO, YOUR HONOR.
THE COURT: OKAY. YOU MAY.
(PLAINTIFFS' EXHIBIT NOS. 1920-A THROUGH K PASSED AMONG THE JURORS)
MR. BROWN: YOUR HONOR, MIGHT I START OUR COPY OF IT FROM THE OTHER END? THE SAME PICTURES.
THE COURT: ANY OBJECTION?
MS. MASON: NO, YOUR HONOR.
THE COURT: YES, YOU MAY. YOU MAY DO THAT.
THE COURT: WHILE THE JURY IS LOOKING AT THAT, LET ME JUST TALK TO COUNSEL.
(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)
THE COURT: I NEED TO MAKE SURE, JURORS, AS YOU'RE LOOKING AT THEM TOGETHER THAT YOU'RE NOT DISCUSSING ANYTHING ABOUT THE CASE, OR ANYTHING AT ALL.
OKAY. THE JURY IS DONE.
WHY DON'T YOU PICK THOSE UP, AND THEN I THINK WE'LL RECESS FOR LUNCH.
JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION OVER THE NOON HOUR, AND WE'LL SEE YOU BACK AT 1:30.
(LUNCH RECESS TAKEN AT 12:05 P.M.)

2997

AFTERNOON SESSION 1:35 P.M.
WEDNESDAY, FEBRUARY 9, 2000
THE COURT: BACK ON THE RECORD. GOOD AFTERNOON, EVERYBODY.
AND YOU MAY PROCEED, MR. BROWN.
MR. BROWN: THANK YOU, YOUR HONOR

DIRECT EXAMINATION (CONTINUED)

BY MR. BROWN: Q. MR. WHITELEY, LET'S START WITH 1986. YOU ARE MARRIED.
FROM THERE UNTIL YOU MOVED INTO YOUR PRESENT HOUSE, HOW MANY HOMES DID YOU LIVE IN?
A. WE LIVED IN -- INCLUDING THE ONE AT MEINERS OAKS, IT WOULD BE THREE.
Q. THREE.
AND THAT DOES THAT INCLUDE THE ONE YOU LIVE IN NOW?
A. YES.
Q. OKAY. SO IN 1986, YOU WERE LIVING IN CASITAS SPRINGS?
A. OKAY.
Q. DESCRIBE CASITAS SPRINGS TO US.

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WHAT KIND OF AN AREA IS THAT? WHERE IS IT?
A. BETWEEN OJAI AND VENTURA. IT'S KIND OF THE MIDDLE OF VENTURA AND OJAI. IT'S KIND OF THE VALLEY, THAT'S THE VALLEY THAT RUNS FROM VENTURA TO OJAI. THERE'S A LAKE CASITAS THAT'S IN THE MIDDLE OF THE TWO TOWNS, AND A LITTLE RURAL TOWN THAT'S ABOUT 800 TO 1,000 PEOPLE. REALLY A SMALL

2998

LITTLE AREA.
Q. GIVE US JUST SORT OF A BRIEF DESCRIPTION OF WHAT YOUR LIFE WAS LIKE WHEN YOU WERE IN THE CASITAS SPRINGS AREA.
A. JUST AN AVERAGE FAMILY LIFE. I'D GO TO WORK IN THE MORNING AND COME HOME IN THE EVENING AND --
Q. WAS SHE WORKING?
A. NO.
Q. DID YOU HAVE YOUR FIRST CHILD THERE?
A. YES, IN CASITAS SPRINGS.
Q. THAT WAS TROY?
A. TROY.
Q. SO HE WAS BORN WHILE YOU WERE LIVING THERE?
A. YES.
Q. YOU MOVED AWAY FROM THERE ABOUT WHAT TIME?
A. IT WAS AROUND IN THE '90S.
Q. FROM THE TIME YOU LIVED THERE IN '86 UNTIL NOW, YOU JUST CONTINUED TO WORK IN YOUR TRUCK DRIVING; RIGHT?
A. YES.
Q. AND SHE DIDN'T WORK OUTSIDE THE HOME?
A. NO.
Q. AND YOU HAD TROY IN CASITAS SPRINGS?
A. CASITAS SPRINGS.
Q. THE NEXT CHILD WAS BORN ABOUT A YEAR LATER?
A. TWO YEARS LATER.
Q. TWO YEARS.
THAT'S TREVOR?
A. TREVOR.

2999

Q. WHERE WERE YOU LIVING WHEN HE WAS BORN?
A. WE WERE LIVING IN MEINERS OAKS.
Q. HOW MUCH TIME WERE YOU SPENDING AS A FAMILY AND WITH THOSE CHILDREN DURING THAT TIME, THOSE TWO CHILDREN?
A. THE AVERAGE AMOUNT OF TIME THAT I THINK ANYBODY WOULD SPEND WITH THEIR CHILDREN AT HOME.
Q. WAS THERE ANYTHING ELSE SIGNIFICANT GOING ON IN YOUR LIFE, JUST YOU LESLIE AND THE CHILDREN? THAT WAS ABOUT IT, OR ANYTHING ELSE?
A. YES. AT THAT TIME?
Q. YES.
A. JUST THE AVERAGE FAMILY HOME LIFE AT THAT POINT.
Q. OKAY. NOW, THE NEXT MOVE WAS UP TO WHERE YOU LIVE NOW? THE NEXT MOVE WAS TO WHERE YOU LIVE NOW?
A. YES, SIR.
Q. OKAY. BEFORE YOU MOVED INTO THE HOME YOU'RE IN NOW, DID YOU SPEND SOME TIME TRYING TO IMPROVE OR IMPROVING THE LAND WHERE THE HOUSE WAS GOING TO BE BUILT?
A. YES, SIR.
Q. WHOSE PROPERTY WAS THAT?
A. THAT WAS TROY'S, HER DAD'S.
Q. WHAT WAS THE IDEA? WHY WERE YOU IMPROVING THE LAND?
A. HE OFFERED TO HELP FINANCE US, HELP TO GET ME AND THE FAMILY INTO OUR HOME AND BE ABLE TO BUY, BECAUSE PROPERTY IS KIND OF EXPENSIVE THERE.
HE HAD A THREE-ACRE ORANGE RANCH, AND HE SAID

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THAT HE WOULD HELP FINANCE THAT, YOU KNOW, THE BUILDING.

3000

SO WE WENT OVER THERE IN OUR SPARE TIME AND WORKED.

Q. WHAT WERE YOU DOING IMPROVING THE LAND; DOING WHAT?

A. WE WERE CLEARING OUT ORANGE TREES. LIKE I SAID, IT WAS A THREE-ACRE ORANGE RANCH.

AT THAT POINT, IT NEEDED A LOT OF WORK, BECAUSE TROY WAS PRETTY OLD, STARTING TO RUN DOWN.

SO WE DID A LOT OF CUTTING OUT THE TREES AND THE BRUSH. AND THERE WAS OVERGROWTH IN THE ORCHARD.

Q. THE HOUSE WAS BUILT THERE?

A. YES, SIR.

Q. YOU LIVE IN THAT HOUSE NOW?

A. YES.

Q. OKAY. THERE WAS SOME PROBLEMS OR SOMETHING WITH ZONING SO YOU COULDN'T BUY IT?

A. YES. THAT'S CORRECT.

Q. THEY WOULDN'T LET YOU CUT IT UP INTO SMALLER SECTIONS; THAT'S THE IDEA?

A. YES.

Q. BUT THAT'S WHERE YOU'VE LIVED EVER SINCE. WHAT YEAR DID YOU MOVE IN THERE?

A. IT WAS IN THE MID-90'S.

Q. BY THE TIME YOU MOVED IN THERE, HOW MANY CHILDREN DID YOU HAVE?

A. WE HAD -- WE HAD -- ELIZABETH WAS RIGHT ABOUT THAT TIME, COMING INTO OUR LIVES AT THAT POINT.

I DON'T RECALL EXACTLY IF SHE WAS BORN IN THE

3001

HOUSE OR BORN PRIOR TO IT, BUT IT WAS RIGHT AROUND THAT SAME TIME.

Q. DID THE CHILDREN GET INVOLVED IN NORMAL ACTIVITIES, CUB SCOUTS, SOCCER, WHATEVER?

A. YEAH.

Q. TELL US WHAT THEY DID.

A. WELL, WE HAD -- TREVOR WAS INTO SOCCER, HE WAS INTO CUB SCOUTS. ELIZABETH SHE WAS INTO SOCCER, T-BALL. TROY WAS INTO SOCCER.

SO, YOU KNOW, WE DID THOSE KINDS OF ACTIVITIES. WHEN WE WEREN'T AROUND THEM, WE'D BE WORKING IN THE ORCHARD.

Q. YOU WERE STILL WORKING YOUR JOB AND LESLIE WAS STILL TAKING CARE OF THE HOUSE?

A. YES, SIR.

Q. LET ME TAKE YOU BACK NOW TO WHEN YOU MET LESLIE. NOW WE ARE BACK IN 1983. OKAY?

A. YES.

Q. FROM THAT TIME FORWARD, DID YOU EVER OBSERVE HER SMOKING MARIJUANA?

A. YES.

Q. HOW MANY TIMES?

A. TWICE.

Q. OKAY. DID YOU EVER OBSERVE HER USING COCAINE?

A. YES.

Q. TELL ME ABOUT THE CIRCUMSTANCES OF THAT.

FIRST, TELL ME HOW MANY TIMES YOU SAW THAT.

A. TWICE.

Q. WHAT WERE THE CIRCUMSTANCES?

3002

A. IT WAS A FRIEND OF MEAN CAME BY, AN OLD FRIEND. HE HAD COME -- HE CAME BY A COUPLE OF TIMES THERE AND JUST SOCIALIZED AND VISITED. AND HE HAD SOME.

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Q. FROM YOUR OBSERVATION, DID LESLIE LIKE MARIJUANA?
A. NO.
Q. HOW COULD YOU TELL THAT; WHAT DID YOU SEE?
A. SHE JUST DIDN'T LIKE IT. SHE SAID IT STUNK. SHE JUST DIDN'T LIKE IT.
Q. OKAY. YOU WERE USING IT?
A. YES.
Q. AND YOU USED IT ON UP TO ABOUT WHEN?
A. IT WAS ABOUT '88.
Q. OKAY. AND THEN YOU STOPPED?
A. YES.
Q. ANY PROBLEMS STOPPING?
A. NO.
Q. WHEN WAS THE LAST TIME LESLIE USED -- WHEN WAS THE SECOND OF THOSE TWO TIMES YOU SAW HER USING IT?
A. IT WAS ABOUT '86.
Q. ALL RIGHT.
A. '85, '86, SOMEWHERE IN THAT.
Q. WHEN WAS THE LAST TIME YOU SAW HER USING COCAINE IN ONE OF THOSE TWO TIMES, THE SECOND ONE?
A. THAT WAS -- IT WAS NOT THE SAME DAYS, BUT IT WAS IN THAT SAME TIME OF '85, '86, AS I RECALL.
Q. DID YOU HAVE ANY TROUBLE STOPPING COCAINE?
A. NO.
Q. NOW, YOU WERE BOTH DRINKING IN 1983?

3003

A. YES.
Q. ALCOHOL, I MEAN?
A. '83?
Q. '83.
A. YES.
Q. WHAT DID YOU DRINK?
A. BEER.
Q. OKAY. AND DID THERE COME A TIME WHEN YOU DECIDED TO STOP DRINKING BEER?
A. YES.
Q. WHEN WAS THAT?
A. IT WAS IN ABOUT '86.
Q. WAS THAT A DECISION YOU MADE TOGETHER?
A. YES.
Q. WHY DID YOU DECIDE TO DO THAT?
A. JUST -- IT JUST SEEMED TO BECOME A PROBLEM, YOU KNOW, AS FAR AS WE'D START ARGUING. WE NOTICED THAT.
WE JUST DECIDED TO QUIT. WE WERE THINKING ABOUT HAVING A FAMILY.
Q. DID YOU HAVE ANY TROUBLE QUITTING?
A. NO, SIR.
Q. NOW, JUST TO GET THE DATES IN RELATIVE POSITION.
YOU HAD STOPPED COCAINE, MARIJUANA AND YOU HAD STOPPED ALCOHOL BY, IN HER CASE '86, IN YOUR CASE LATER.
WHEN WAS TROY BORN, THE FIRST CHILD?
A. HE WAS BORN IN -- WELL, HE'S 11 YEARS OLD. HE WAS BORN IN '89.
Q. SO BEFORE HE WAS BORN, BOTH OF YOU HAD STOPPED

3004

ALL OF THIS STUFF?
A. YES. IT WAS A YEAR, JUST A LITTLE BIT OVER A YEAR BEFORE TROY WAS BORN.
Q. THE ALCOHOL?
A. THE ALCOHOL.
Q. RIGHT. AS FAR AS MARIJUANA, I GUESS THAT WAS ABOUT THREE YEARS BEFORE, AS FAR AS SHE WAS CONCERNED?
A. YES.

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Q. OKAY. LET ME TAKE YOU NOW TO SMOKING.
WHEN YOU MET LESLIE, HOW MUCH WERE YOU SMOKING -- WERE YOU SMOKING? THAT WOULD BE A BETTER QUESTION.
A. YES.
Q. YOU WERE SMOKING.
WHEN DID YOU START?
A. I FIRST SMOKED MY FIRST CIGARETTE, I WAS ABOUT SIX.
Q. SIX YEARS OLD?
A. YES.
Q. AND GIVE US SOME KIND OF HISTORY.
I MEAN, BY WHAT TIME WERE YOU SMOKING SEVERAL A DAY? KIND OF TAKE US THROUGH IT.
A. WE WERE PROBABLY -- BACK THEN -- WE ARE TALKING A LONG TIME AGO. BUT BACK THEN, I WOULD GO OVER TO MY BEST FRIEND'S HOUSE, TODD. HIS PARENTS, THEY LEFT THEIR CIGARETTES OUT ALL THE TIME.
THEY WOULD BE SLEEPING IN THE BEDROOM. WE'D GET THEM AND GO OUT IN THE GARAGE AND SMOKE THEM.
THERE WOULD BE A COUPLE. PROBABLY, WE SMOKED A

3005

COUPLE A DAY.
Q. BY THE TIME YOU GOT TO JUNIOR HIGH -- THE NAME OF THAT SCHOOL AGAIN WAS?
A. CABRILLO JUNIOR HIGH SCHOOL.
Q. THAT'S WHERE LESLIE WAS ALSO ALTHOUGH YOU DIDN'T REALLY KNOW HER?
A. YES.
Q. WERE YOU SMOKING BY THAT TIME? IF SO, HOW MUCH?
A. YES. BEGINNING IN HIGH SCHOOL, IT WAS PROBABLY FIVE TO 10 CIGARETTES A DAY.
Q. I MEAN JUNIOR HIGH.
A. JUNIOR HIGH SCHOOL. EXCUSE ME.
Q. FIVE TO 10?
A. OH, SOMEWHERE IN THAT NEIGHBORHOOD.
Q. WHAT PERCENT OF THE KIDS WERE SMOKING IN THAT JUNIOR HIGH SCHOOL?
MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
MR. BROWN: Q. FROM YOUR OBSERVATION.
THE COURT: YOU NEED TO LAY A FOUNDATION AND THEN FRAME YOUR QUESTION IN TERMS OF THE FOUNDATION YOU HAVE LAID.
IT'S OVERBROAD RIGHT NOW.
MR. BROWN: Q. LET'S TAKE YOUR FRIENDS, THE PEOPLE YOU HUNG OUT WITH MOST OF THE TIME.
DID THEY SMOKE?
A. YES. ALL OF THEM -- MY FRIENDS AND THE GROUP THAT I WAS AROUND?
Q. CORRECT.

3006

A. ALL OF THEM BUT ONE.
Q. FROM WHAT YOU COULD OBSERVE FROM THE REST OF THE SCHOOL, SMOKING SEEMED COMMON OR UNCOMMON?
A. IT WAS VERY COMMON BACK THEN.
Q. OKAY. LET'S GO UP TO HIGH SCHOOL.
BY THE TIME YOU GRADUATED FROM HIGH SCHOOL, WHAT WAS YOUR RATE OF SMOKING? HOW MANY CIGARETTES WERE YOU SMOKING A DAY ON AVERAGE?
A. AT HIGH SCHOOL, I SMOKED OVER A PACK, ABOUT A PACK.
Q. AND THAT WAS TRUE AT THE END OF HIGH SCHOOL WHEN YOU GRADUATED?
A. YES.

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Q. OKAY. NOW, BY THE TIME YOU MEET LESLIE, 1983, WHAT ARE YOU SMOKING?
A. I WAS SMOKING MARLBORO.
Q. AND HOW MUCH?
A. IT WAS ABOUT A PACK, A LITTLE OVER A PACK. MAYBE A PACK AND A QUARTER.
Q. DID YOU SMOKE MARLBORO MOST OF YOUR LIFE?
A. THE MAJORITY OF IT, YES.
Q. UP TO NOW?
A. YES.
Q. DID YOU SMOKE ANYTHING ELSE?
A. YEAH, I'D SMOKE, YOU KNOW, A LOT -- A LOT OF THE DIFFERENT BRANDS, BUT MOSTLY MARLBORO AND CAMELS.
CAMELS WAS MY SECOND CHOICE.
Q. OKAY. WHICH MARLBOROS DID YOU SMOKE?

3007

A. THE REDS.
Q. THE REDS.
THOSE ARE NOT LIGHTS?
A. NO, THEY'RE REGULAR.
Q. OKAY. WELL, DID YOU AND LESLIE -- FIRST OF ALL, DID YOU EVER TRY TO QUIT SMOKING?
A. DID I EVER TRY AND QUIT SMOKING?
Q. DID YOU EVER MAKE AN EFFORT TO STOP?
A. YES.
Q. AND JUST GIVE US A DESCRIPTION OF THAT, IN GENERAL.
MORE THAN ONCE? HOW MANY TIMES?
A. WELL, I TRIED QUITE A FEW LITTLE TIMES THAT DIDN'T REALLY GO ANYWHERE. YOU GO AN HOUR OR SO, END UP JUST GIVING UP ON IT --
Q. WHY WOULD YOU GIVE UP --
A. -- IF YOU WANT TO CALL THOSE ATTEMPTS.
Q. WHY WOULD YOU GIVE UP AFTER SUCH A SHORT TIME?
A. WHAT?
Q. WHY WOULD YOU GIVE UP TRYING TO QUIT AFTER AN HOUR OR SO?
A. JUST COULDN'T -- JUST DIDN'T -- THE ANXIETY WOULD BE THE BEST WAY TO PUT IT. YOU GET THIS FEELING YOU'VE GOT TO HAVE IT.
Q. NOW, DID YOU EVER ACTUALLY TRY TO QUIT AND SUCCEED FOR MORE THAN A COUPLE OF HOURS?
A. YES.
Q. AND WAS THIS WITH LESLIE OR WITHOUT HER?

3008

A. IT WAS WITH LESLIE.
Q. AND DESCRIBE THAT TO US. AND TELL US WHEN.
A. WELL, WHEN WE WENT ON A CAMPING TRIP ONCE, AND WE DECIDED TOGETHER WE WERE GOING TO MAKE AN ATTEMPT TO QUIT SMOKING.
Q. WHERE DID YOU GO?
A. WE WENT TO YOSEMITE.
Q. WHO WAS WITH YOU, IF ANYBODY?
A. JUST ME AND LESLIE.
Q. ABOUT WHAT YEAR WAS THAT?
A. IT WAS -- IT WAS UP ON THE HILL. CASITAS SPRINGS.
SO ABOUT '86.
Q. ABOUT THE TIME YOU WERE MARRIED?
A. I THINK IT WAS '87.
Q. OKAY. AFTER YOU WERE MARRIED, WHY DID YOU DECIDE TO QUIT?
A. I DON'T REMEMBER EXACTLY. WE JUST DID.

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Q. HOW DID IT GO?
A. NOT VERY WELL. IT WENT -- I THINK I MADE IT A COUPLE OF WEEKS, AND I THINK SHE MADE IT ABOUT A WEEK, NOT EVEN THAT.
IT WAS ON THE TRIP. WE FOUGHT AND BICKERED. IT DIDN'T GO VERY WELL. IT WASN'T A VERY GOOD VACATION.
Q. I TAKE IT YOU BOTH WENT BACK TO SMOKING?
A. YES.
Q. DID YOU EVER TRY AFTER THAT?
A. YES.

3009

Q. WHY DID YOU TRY AFTER THAT?
A. I WENT TO THE DOCTOR, AND HE TOLD ME THAT HE THOUGHT I WAS ON A FAST ROAD TO EMPHYSEMA.
Q. SO YOU TRIED TO STOP?
A. YES.
Q. DID YOU TRY TO GET LESLIE TO STOP AT THAT TIME?
A. YES.
Q. YOU ASKED HER TO STOP?
A. YEAH, I ASKED HER IF SHE'D TRY WITH ME.
Q. WHAT DID SHE SAY?
A. SHE TOLD ME SHE DIDN'T HAVE A PROBLEM WITH IT, YOU KNOW, BECAUSE SHE WOULD SMOKE LIGHT CIGARETTES.
SHE HAD LOW BLOOD PRESSURE. THE DOCTOR DIDN'T TELL HER SHE HAD A PROBLEM. THERE WAS NO REASON FOR HER TO QUIT.
Q. WHEN WAS THAT, ABOUT?
A. THAT WAS IN THE '90S. ABOUT FOUR, FIVE YEARS AGO.
Q. OKAY. THEN DID THE TWO OF YOU FINALLY QUIT?
A. YES.
Q. OKAY. AND WHEN WAS THAT?
A. THAT WAS A COUPLE OF YEARS AGO, WHEN SHE WAS DIAGNOSED WITH BRONCHITIS.
Q. AND SHE QUIT AT THAT TIME?
A. YES.
Q. AND WHY DID YOU QUIT?
A. WELL, SHE ASKED IF I'D MAKE AN ATTEMPT WITH HER.
Q. DURING ANY OF YOUR SMOKING HISTORY RIGHT UP TO

3010

THE TIME YOU QUIT, DID YOU EVER HAVE AN APPRECIATION THAT YOU WERE USING A PRODUCT THAT HAD A HIGH RISK OF A FATAL DISEASE?
A. NO.
Q. YOU SAW LABELS ON THE CIGARETTES, DIDN'T YOU?
A. YEAH, I SEEN LABELS.
Q. AND THEY DIDN'T MAKE ANY DIFFERENCE TO YOU?
A. NO.
Q. WHY NOT?
A. NEVER REALLY PAID MUCH ATTENTION TO THEM.
Q. OKAY. DID YOU HAVE SOME REASON TO BELIEVE THAT CIGARETTES MIGHT NOT BE -- I WILL WITHDRAW THAT.
DID YOU HAVE ANY INFORMATION THAT LED YOU TO BELIEVE THAT THE RISKS OF CIGARETTES WERE NOT VERY MUCH, OR IF ANYTHING?
A. WELL, WE HAD HEARD BOTH, YOU KNOW, OVER THE YEARS. WE'VE HEARD, YOU KNOW, PEOPLE SAY ONE THING AND PEOPLE SAY THE OTHER THING.
Q. OKAY. AND WHO DID YOU HEAR THE BOTH FROM; WHERE DID THEY COME FROM?
A. WELL, YOU HEAR -- YOU KNOW, LIKE THE BILLBOARDS, YOU KNOW. YOU'D ALSO HEAR THE TOBACCO COMPANIES IN DIFFERENT ARTICLES SAYING THAT IT WASN'T BAD FOR YOU.

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WE HAD IT IN DIFFERENT FORMS.
Q. OKAY. AND THEN YOU HEARD SOMETHING TO THE CONTRARY TOO?
A. YEAH.
Q. OKAY. AND IN YOUR MIND, THE SERIOUSNESS OF THE

3011

RISK OF FATAL DISEASE, LUNG CANCER, WHATEVER, JUST DIDN'T RISE TO A POINT WHERE YOU BELIEVED IT WAS NECESSARY TO QUIT THEN. WOULD THAT BE ABOUT RIGHT?
A. YES.
Q. OKAY. SO MOVING NOW TO -- OH, INCIDENTALLY, DID YOU AND LESLIE EVER TALK ABOUT SMOKING RISKS? DID EITHER ONE OF YOU EVER TALK ABOUT SOME UNDERSTANDING THAT THERE WAS A HIGH RISK OF CANCER OR ANY OTHER SERIOUS DISEASE CONNECTED TO SMOKING?
A. JUST THE TIME WITH THE EMPHYSEMA WHEN THE DOCTOR MADE THAT STATEMENT TO ME.
Q. SO YOU TOLD HER ABOUT THAT?
A. YEAH.
Q. OKAY. THEN SHE ANSWERED THE WAY YOU TOLD US?
A. YES.
Q. OKAY. THE DIAGNOSIS OF LUNG CANCER OCCURS ABOUT JUNE OF 1998. LET'S GO TO THAT DAY.
DID YOU WORK THAT DAY?
A. YES.
Q. WHAT DAY OF THE WEEK WAS IT?
A. IT WAS A SATURDAY.
Q. DID YOU WORK ALL DAY?
A. YES.
Q. WHEN YOU CAME HOME, WHAT DID YOU FIND?
A. SHE WAS ON THE COUCH, PUKING BLOOD.
Q. SHE OBVIOUSLY WAS SICK?
A. YES.
Q. CAN YOU GIVE US SOME IDEA OF HER SYMPTOMS?

3012

A. YOU SAID DIAGNOSIS, DIDN'T YOU? THAT'S WHAT YOU SAID?
Q. THE DAY THAT YOU LEARNED WHAT THE DOCTORS THOUGHT.
A. SATURDAY, I CAME HOME FROM WORK, AND SHE WAS ON THE COUCH IN PRETTY BAD SHAPE.
Q. WAS HER MOTHER THERE?
A. YES.
Q. TELL US WHAT HER OTHER SYMPTOMS WERE. WHAT ELSE DID YOU SEE BESIDES WHAT YOU TOLD US, WHICH WAS BAD ENOUGH? WHAT ELSE DID YOU OBSERVE ABOUT HER?
A. SHE COULDN'T MOVE. SHE THOUGHT SHE HAD A BAD FLU.
Q. OKAY.
A. AND SHE WAS EXPERIENCING LEG WEAKNESS. SHE COULDN'T HARDLY MOVE HER LEGS VERY WELL.
Q. WHAT DID YOU DO?
A. I CALLED THE DOCTOR, DR. LEONARD.
Q. AND JUST TELL US WHAT HAPPENED.
A. WELL, PRIOR TO THAT, SHE WAS GOING TO DR. LEONARD TO TRY AND FIND OUT WHAT HER LEG WEAKNESS WAS, BECAUSE SHE WAS EXPERIENCING GRADUALLY PROGRESSIVE WEAKNESS OF THE LEGS.
Q. OKAY.
A. SHE DIDN'T KNOW ANYTHING ABOUT HER LUNGS OR ANYTHING.
AND A WEEK BEFORE THAT, SHE STARTED COUGHING UP A SMALL AMOUNT OF BLOOD. SHE SAID SHE HAD SORENESS IN HER CHEST.

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3013
HE WENT AHEAD, TOOK A LUNG X-RAY.
Q. IN YOUR CONVERSATION WITH HIM OVER THE PHONE, WHAT DID HE TELL YOU?
A. HE TOLD ME HE HADN'T GOT THE LUNG X-RAY BACK.
I TOLD HIM THAT I WAS PRETTY WORRIED, BECAUSE SHE WAS VOMITING UP BLOOD. SHE LOOKED REALLY SICK.
AND HE SAID HE WOULD CALL OVER TO THE HOSPITAL AND SEE WHAT THE X-RAYS SHOWED.
Q. OKAY. DID YOU TALK TO HIM AGAIN?
A. YES. HE CALLED ME BACK ABOUT FIVE MINUTES LATER.
Q. AND WHAT DID HE TELL YOU THIS TIME?
A. HE TOLD ME TO BRING HER -- BRING HER IN.
Q. SO WHERE DID YOU TAKE HER?
A. TOOK HER INTO COMMUNITY.
Q. IS THAT COMMUNITY HOSPITAL?
A. YES.
Q. THAT'S IN VENTURA. THAT WAS ABOUT 25, 30 MINUTES AWAY?
A. YES.
Q. DO YOU RECALL WHO ELSE WENT WITH YOU, IF ANYBODY, BUT YOU AND YOUR WIFE?
A. IT WAS HER DAD.
Q. SO WHEN YOU GOT TO THE HOSPITAL, WHAT HAPPENED?
A. THEY EXAMINED HER IN THE EMERGENCY, BECAUSE THEY KNEW THERE WAS A MASS.
Q. OKAY.
A. AND AT THAT POINT, THEY DIDN'T KNOW WHAT IT WAS. THEY JUST SAID IT WAS A BIG MASS, AND WAS PREDOMINANTLY TO
3014
THE LEFT.
THEY COULDN'T TELL US WHAT IT REALLY WAS UNTIL THEY DID A BIOPSY. THEY HAD TO DO A BIOPSY.
Q. WAS SHE ADMITTED TO THE HOSPITAL?
A. YES.
Q. HOW LONG DID SHE STAY IN THE HOSPITAL ON THAT OCCASION?
A. IT WAS ABOUT A WEEK OR A LITTLE LONGER.
Q. NOW, AFTER -- WHEN DID THEY DO THE BIOPSY? DID THEY DO IT THAT DAY?
A. I THINK IT WAS A DAY OR TWO, A COUPLE OF DAYS. THE NEXT DAY OR THE DAY AFTER.
Q. WHEN WAS THE FIRST TIME SOME DOCTOR TOLD YOU THAT SHE HAD LUNG CANCER?
A. IT WAS DR. BRUGMAN. IT WAS THE DAY FOLLOWING THE BIOPSY.
Q. WITHIN A FEW DAYS?
A. YES.
Q. OKAY. SO WHAT HAPPENED THEN? WHAT KIND OF TREATMENT WAS PRESCRIBED FOR HER?
A. WELL, HE TOLD US THAT IT WOULD BE AN OUTPATIENT TREATMENT.
Q. AND WHAT WAS IT?
A. IT WAS CHEMOTHERAPY, AND ALONG WITH RADIATION.
Q. AND THAT WENT ON FOR A PERIOD OF TIME?
A. YES.
Q. WAS SHE ABLE TO COME HOME DURING THE TIME SHE WAS GETTING THAT TREATMENT?
3015
A. YES.
Q. HOW WAS SHE CARED FOR WHEN SHE WAS AT HOME?
A. I STILL HAD TO MAINTAIN MY JOB. SO HER MOM AND DAD WOULD COME OVER AND HELP HER, ALONG WITH MY KIDS.

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Q. OF COURSE, YOU HAD FOUR CHILDREN --
A. RIGHT.
Q. -- WHEN THIS HAPPENED?
A. RIGHT.
Q. AND WHEN THAT HAPPENED, CARL WAS HOW OLD, THE BABY?
A. HE WAS ABOUT A YEAR.
Q. NOW --
A. A LITTLE OVER A YEAR.
Q. ON THE WAY TO THE HOSPITAL, ON THIS OCCASION YOU TALKED ABOUT, DID YOU HAVE SOME CONVERSATION WITH LESLIE ABOUT HER FEELINGS, WHAT WAS GOING THROUGH HER MIND ON THE WAY TO THE HOSPITAL?
A. YES, SHE WAS -- SHE WAS CRYING. SHE DIDN'T WANT ME TO TAKE HER. SHE WAS AFRAID THAT SHE'D NEVER COME HOME AND SEE HER KIDS AGAIN.
Q. BUT SHE DID. OKAY. AND SHE CAME HOME.
AND THEN MAYBE YOU COULD TELL US: WHAT WAS HER PHYSICAL CONDITION? WHAT WAS SHE ABLE TO DO THROUGHOUT THE REST OF 1998, WHILE SHE WAS HAVING THIS TREATMENT AND AFTERWARDS?
A. SHE WAS PRETTY MUCH BEDRIDDEN, YOU KNOW. SHE COULD GET UP AND GO TO THE BATHROOM. THE KIDS WOULD HELP HER.

3016

Q. OKAY.
A. SHE -- YOU KNOW, SHE WAS PRETTY SICK.
Q. SHE WASN'T DOING ANY HOMEWORK, I TAKE IT -- NOT HOMEWORK -- HOUSEWORK?
A. NO.
Q. DID YOU HAVE HELP WITH THAT?
A. YES.
Q. AT SOME POINT, WE'VE HEARD THAT SHE HAD SOME BRAIN RADIATION, I THINK TWICE.
CAN YOU RECALL WHEN THOSE WERE?
A. WELL, SHE HAD THEM ON THREE DIFFERENT OCCASIONS.
Q. WHAT WERE THE EFFECTS OF THAT? HOW DID THAT IMPACT HER?
A. WELL, EACH TIME THEY DO THIS, SHE GETS REALLY TIRED AND IT JUST DRAINS HER.
THE FIRST TIME WAS THE DOCTOR OPTED KIND OF LIKE -- WHAT'S THE RIGHT WORDS? THEY LIKE DO IT JUST IN CASE THERE ARE CANCER CELLS THAT WENT TO THE BRAIN. SO THEY DO THAT.
WELL, THEY FOUND THREE TUMORS IN THE PROCESS, SO THEY HAD TO DO EXTRA TREATMENT ON THOSE TUMORS. IT MIGHT HAVE BEEN A FOURTH ONE. I MIGHT BE WRONG. IT MIGHT HAVE BEEN A FOURTH ONE. BUT I KNOW THEY DID EXTRA RADIAL (SIC) TREATMENT ON HER.
AND THE LAST TIME WAS THEY FOUND -- IT WAS LIKE SIX MONTHS LATER OR SO -- THEY FOUND ANOTHER ONE ON THE BACK OF HER HEAD.
Q. SO WHAT WAS THAT BRAIN TREATMENT LIKE IN TERMS OF

3017

HOW IT IMPACTED HER LIFE?
A. WELL, IT COMPLETELY SLOWED HER DOWN. AND YOUR MIND DON'T WORK RIGHT ANYMORE. IT'S CONFUSING. SHE IS HAVING MAJOR HEADACHES.
Q. ANY VISION PROBLEMS?
A. YES. SHE CAN'T REALLY SEE MUCH ANYMORE. SHE SAID SHE HAS SPOTS IN HER EYES. SHE WON'T DRIVE. SHE CAN'T DRIVE NOW.
Q. WHEN DID SHE STOP DRIVING?

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A. WELL, THIS HAS BEEN A PROGRESSION, BUT PRETTY MUCH RIGHT AFTER THAT LAST ONE WHERE SHE HAD SCREWS -- SHE HAD TWO SURGERIES; PUT SCREWS IN HER HEAD.
Q. OKAY.
A. AND SHORTLY AFTER THAT, IT PRETTY MUCH TOOK HER VISION AWAY.
Q. FROM YOUR OBSERVATION AND FROM WHAT YOU AND SHE DISCUSSED, HOW IS SHE FACING UP TO THIS? HOW IS SHE DEALING WITH IT?
A. IT'S BEEN TOUGH, YOU KNOW. IT'S BEEN TOUGH.
Q. OKAY. IS SHE OPTIMISTIC ABOUT WHAT'S GOING TO HAPPEN TO HER?
A. SHE -- YES, SHE'D LIKE TO BE. SHE GOT -- SOME DAYS SHE FEELS LIKE -- YOU KNOW, I GUESS SHE FEELS LIKE SHE IS UP AGAINST A PRETTY BIG BATTLE, AND OTHER DAYS -- SHE HAS ALWAYS FOUGHT. SHE HAS FOUGHT FROM DAY ONE.
SO, YOU KNOW, YOU HAVE TO. WHEN YOU HAVE THIS SERIOUS OF A DISEASE, YOU HAVE TO. THE HARDEST THING SHE'S HAD IS WITH THE KIDS. SEEING HOW --

3018

Q. IN WHAT RESPECT? I'M SORRY.
A. SEEING HOW IT'S AFFECTED THE KIDS.
Q. HOW HAS IT AFFECTED THEM?
A. WELL, IT'S JUST HARD ON A MOTHER TO SEE HER KIDS HAVE TO SEE HER GO THROUGH THIS.
Q. HOW HAVE THEY REACTED? I'M SURE IT'S DIFFERENT. HOW HAVE THE FOUR CHILDREN REACTED?
A. WELL, THEY KNOW THEIR MOM IS SICK. THEY KNOW THERE'S SOMETHING REALLY WRONG, ESPECIALLY CARL. HE'S ALL THE TIME SAYING, "MOMMY'S SICK. GOT A HEADACHE."
Q. THAT'S THE BABY?
A. THAT'S THE BABY. BECAUSE THAT'S ALL HE KNOWS. HE DON'T REALLY KNOW MOM BEING WELL.
ELIZABETH, SHE IS SCARED TO DEATH THAT SHE IS GOING TO DIE.
SORRY.
Q. LET'S GO TO RIGHT NOW. WHAT IS THE DAY-TO-DAY LIFE FOR HER NOW, TODAY, IN TERMS OF WHAT SHE CAN DO, WHAT SHE CAN'T DO?
A. WELL, SHE IS HAVING GOOD DAYS AND BAD DAYS.
RIGHT NOW, SHE'S HAVING REALLY BAD DAYS.
Q. SHE IS UP HERE IN SAN FRANCISCO?
A. YES.
Q. SHE HAS BEEN STAYING IN A HOTEL ROOM?
A. YES.
Q. GOING BACK JUST FOR A MOMENT, HOW ABOUT TROY, THE OLDEST; HOW IS TROY DEALING WITH IT?
A. HER DAD?

3019

Q. NO. I'M SORRY. YOUR SON, YOUR OLDEST SON.
A. HE ACTS LIKE THE STRONGEST OF THE GROUP. HE'S ACTING LIKE A NORMAL -- PRETTY MUCH NORMAL 11-YEAR-OLD.
BUT, YOU KNOW, YOU CAN SEE LITTLE ACTING UPS. EVERYTHING IS KIND OF PLUNKED ON HIM BECAUSE HE'S THE OLDEST.
Q. OKAY.
A. HE'S THE ONE THAT'S GOT TO TAKE CHARGE, IT SEEMS TO ME, YOU KNOW.
Q. NOW, JUST GENERALLY, OUTSIDE THIS COURTROOM, HOW ARE YOU DEALING WITH IT?
A. I HAVE HAD A HELL OF A TIME WITH IT. YOU KNOW, IT'S BEEN TOUGH ON ME.
Q. OKAY. HAS SHE BEEN -- EFFECTIVELY BEEN ABLE TO

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TAKE CARE OF HER HOUSE AND HER CHILDREN SINCE THIS DIAGNOSIS?

A. NO.

Q. SHE HAS TRIED?

A. YES.

Q. WHAT HAS SHE BEEN ABLE TO DO FROM TIME TO TIME?

A. WELL, SHE JUST TRIES TO DO THE NORMAL THINGS THAT MAKES HER FEEL LIKE A HUMAN BEING AND A MOM AGAIN. YOU KNOW, HAVE HER LIFE BACK.

LIKE I SAID, SHE HAS GOOD DAYS AND SHE HAS BAD DAYS. EVEN ON HER BAD DAYS, SHE TRIES STRUGGLING. I SEEN HER, THE WAY SHE COULD HARDLY MOVE, STILL TRY TO STRUGGLE INTO THE KITCHEN. "GET OUT OF THE KITCHEN. I WILL DO THE DISHES INSTEAD OF YOU."

3020

Q. I KNOW THIS IS A TOUGH QUESTION.

HOW HAS THIS IMPACTED YOUR MARRIAGE, YOUR RELATIONSHIP WITH HER?

A. BOY, IT'S TURNED IT UPSIDE DOWN.

Q. IS SHE SICK MOST OF THE TIME?

A. YES.

MR. BROWN: OKAY. I THINK THAT'S ALL.

THANK YOU VERY MUCH.

THE COURT: OKAY. MS. MASON.

CROSS-EXAMINATION

BY MS. MASON: Q. HI, MR. WHITELEY.

A. HI.

Q. MY NAME IS LUCY MASON. YOU AND I HAVE NOT MET BEFORE.

CAN YOU HEAR ME OKAY, SIR?

A. YES.

Q. SIR, I WANT TO START THIS AFTERNOON BY DISCUSSING WITH YOU A LITTLE BIT ABOUT YOUR BACKGROUND.

I THINK YOU TOLD US ALREADY, SINCE ABOUT THE AGE OF FOUR OR FIVE, YOU GREW UP IN VENTURA COUNTY; IS THAT RIGHT?

A. YES.

Q. AND YOU HAVE LIVED IN ONE OF TWO CITIES DOWN THERE; IS THAT CORRECT, SIR?

A. YES.

Q. ONE CITY IS THE CITY OF VENTURA ITSELF?

A. YES.

3021

Q. AND THE OTHER CITY IS OJAI; IS THAT RIGHT?

A. YES.

Q. AND, SIR, YOU CURRENTLY LIVE IN OJAI; IS THAT RIGHT?

A. YES. ACTUALLY, A TOWN CALLED MEINERS OAKS. IT'S A LITTLE SMALL TOWN OFF OF OJAI.

Q. SO YOU DON'T ACTUALLY LIVE IN THE CITY OF OJAI?

A. IT'S NOT IN THE CITY. IT'S IN THE COUNTY.

Q. BUT YOU HAVE LIVED IN VENTURA COUNTY SINCE ABOUT FOUR YEARS OLD; IS THAT RIGHT?

A. YES.

Q. I THINK, SIR, YOU ALREADY TOLD US THAT YOU WENT TO CABRILLO JUNIOR HIGH SCHOOL, CORRECT?

A. YES.

Q. AND YOUR WIFE LESLIE ALSO ATTENDED THAT JUNIOR HIGH SCHOOL; IS THAT RIGHT?

A. YES.

Q. AND YOU REMEMBER SEEING HER IN JUNIOR HIGH, BUT YOU DIDN'T KNOW HER THEN; IS THAT RIGHT?

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A. YES.
Q. ALL RIGHT, SIR. I WANT TO FOCUS -- TURN OUR ATTENTION FOR A MINUTE TO THE INFORMATION YOU LEARNED ABOUT SMOKING WHILE YOU WERE GROWING UP.
ISN'T IT TRUE, SIR, THAT BY THE TIME THAT YOU WERE SIX YEARS OLD, YOU HAD HEARD THAT SMOKING POSED A RISK OF DISEASE; ISN'T THAT TRUE?
A. AT SIX?
Q. SIX.

3022

A. I DON'T KNOW. I MIGHT HAVE. SIX YEARS OLD, I DON'T THINK SIX YEARS OLD YOU THINK MUCH OF ANYTHING.
Q. DO YOU REMEMBER, SIR, GIVING YOUR DEPOSITION IN THIS CASE?
A. YES.
Q. DOWN IN OJAI?
A. YES.
Q. MR. BROWN WAS THERE?
A. YES.
Q. ALL RIGHT, SIR.
DO YOU REMEMBER TELLING US THEN THAT YOU LEARNED WHEN YOU WERE SIX YEARS OLD THAT SMOKING --
MR. BROWN: YOUR HONOR, OBJECT TO THE PROCEDURE.
THE COURT: OKAY. IF THERE IS AN OBJECTION TO THE PROCEDURE, YOU NEED TO GET THE DEPOSITION.
MS. MASON: YES, YOUR HONOR.
Q. MR. WHITELEY, I'M GOING TO HAND YOU THE DEPOSITION THAT YOU GAVE IN THIS CASE, SIR.
THE COURT: IF YOU'VE GOT A COPY FOR ME, I'LL GIVE TATSUO THE ORIGINAL BACK.
MS. MASON: Q. MR. WHITELEY, YOU HAD THE OPPORTUNITY TO REVIEW THIS TRANSCRIPT AND MAKE ANY CHANGES TO IT THAT YOU WANTED TO; ISN'T THAT RIGHT?
A. YES.
Q. ALL RIGHT, SIR. IF YOU'LL TURN WITH ME, PLEASE, TO PAGE 28.
I PROPOSE TO READ LINE 22 THROUGH PAGE 29, LINE 10. DOESN'T THAT HAVE -- DO YOU SEE IT THERE, SIR?

3023

A. 28. AND WHAT --
MS. MASON: I'M ASKING THE COURT WHETHER I CAN READ LINE 22 THROUGH PAGE 29, LINE 10.
THE COURT: LET ME JUST EXPLAIN TO MR. WHITELEY WHAT WE ARE DOING.
COUNSEL IS PROPOSING TO READ THIS. SHE IS NOT ASKING YOU ANYTHING ABOUT IT. YOU ARE FREE, THOUGH, TO FOLLOW ALONG. THAT'S WHY YOU HAVE BEEN GIVEN A COPY.
BUT I NEED TO FIND OUT FROM MR. BROWN WHETHER HE HAS ANY OBJECTION?
MR. BROWN: NO OBJECTION.
THE COURT: OKAY. YOU MAY READ.
MS. MASON: BEGINNING ON LINE 22.
"QUESTION: HOW OLD WERE YOU" --
THE COURT: SAY "QUESTION" AND "ANSWER," PLEASE.
MS. MASON: THANK YOU, YOUR HONOR. I APOLOGIZE.
"QUESTION: HOW OLD WERE YOU WHEN YOU FIRST HEARD ANYBODY SUGGESTING THAT SMOKING MIGHT BE BAD FOR YOU, SMOKING MIGHT BE HAZARDOUS OR DANGEROUS TO YOUR HEALTH, SMOKING MIGHT POSE A HEALTH HAZARD, ANYTHING LIKE THAT AT ALL?
"ANSWER: OH, I CAN'T RECALL A SPECIFIC TIME.
"QUESTION: OF COURSE NOT, BUT YOUR BEST ESTIMATE ABOUT HOW OLD YOU WERE, PLEASE.

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"ANSWER: OH, I WAS PROBABLY -- I WAS PROBABLY YOUNG, TOO, ABOUT THE SAME AGE. I DON'T -- I DON'T REMEMBER EXACTLY. I'VE HEARD BOTH PROS AND CONS ON IT. I'VE HEARD PEOPLE SAY ONE THING, AND

3024

I'VE HEARD PEOPLE SAY THE OTHER.
"QUESTION: WHEN YOU SAY 'THE SAME AGE,' WHAT ARE YOU TALKING ABOUT? ARE YOU TALKING ABOUT AGE SIX?
"ANSWER: YEAH, WHEN I WAS A KID."
Q. DID I READ THAT CORRECTLY, MR. WHITELEY?
A. YES.
Q. OKAY. SIR, BACK WHEN YOU WERE A TEENAGER LIVING IN VENTURA COUNTY, YOU ALSO SAW THE SURGEON GENERAL'S WARNINGS ON PACKAGES OF CIGARETTES, DIDN'T YOU, SIR?
A. YES.
MR. BROWN: EXCUSE ME, YOUR HONOR. OBJECTION AS TO TIME.
THE COURT: SHE JUST SAID WHEN HE WAS A TEENAGER. HE HAS ALREADY TOLD US THE DATE OF HIS BIRTH. SO I THINK THAT'S SUFFICIENT.
MR. BROWN: A SIX-YEAR STRETCH.
THE COURT: WELL, IF YOU WANT TO ASK ABOUT IT, YOU CAN. IT'S GOOD ENOUGH FOR ME IN TERMS OF THE LAW.
OKAY. YOU CAN ASK THAT.
MS. MASON: I DIDN'T HEAR THE ANSWER. I'LL ASK IT AGAIN.
Q. BACK, SIR, WHEN YOU WERE A TEENAGER LIVING IN VENTURA COUNTY, YOU ACTUALLY SAW THE SURGEON GENERAL'S WARNINGS ON PACKS OF CIGARETTES, DIDN'T YOU?
A. YES.
Q. AND YOU REMEMBER SEEING THAT SAME WARNING ON BILLBOARDS; ISN'T THAT TRUE?

3025

A. I DON'T RECALL SPECIFICALLY SEEING IT ON BILLBOARDS, BUT I'M SURE I PROBABLY.
Q. ON PRINT ADVERTISEMENTS; ISN'T THAT RIGHT? YOU SAW THE SURGEON GENERAL'S WARNINGS ON PRINT ADVERTISEMENTS WHEN YOU WERE A TEENAGER?
A. I PROBABLY DID.
Q. SIR, AND YOU UNDERSTOOD THAT SURGEON GENERAL'S WARNING TO MEAN THAT THE GOVERNMENT WAS TELLING YOU THAT SMOKING POSED A RISK OF SERIOUS DISEASE; ISN'T THAT TRUE?
MR. BROWN: OBJECTION. ARE WE STILL TALKING ABOUT THE SAME TIME?
THE COURT: I ASSUME SO. SHE IS ASKING ABOUT THE TIME HE SAW IT. THAT'S THE QUESTION.
MS. MASON: YOUR HONOR --
MR. BROWN: I THINK IT'S VAGUE AS TO WHICH WARNING. THERE ARE VARIOUS WARNINGS. SHE OUGHT TO TELL THE WITNESS WHICH WARNING SHE'S TALKING ABOUT.
THE COURT: IF HE BREAKS IT OUT, HE CAN TELL US THAT AS PART OF THE ANSWER.
I'M GOING TO ALLOW THE QUESTION, BUT WITH THE UNDERSTANDING THAT IF YOU'RE ABLE TO BE MORE SPECIFIC IN TERMS OF WHICH WARNINGS OR WHICH TIME, YOU SHOULD FEEL FREE TO DO IT.
BUT ABSENT THAT, I'LL ALLOW THE QUESTION.
MS. MASON: LET ME ASK IT, YOUR HONOR, A DIFFERENT WAY.
THE COURT: OKAY.
MS. MASON: Q. MR. WHITELEY, THE SURGEON

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GENERAL'S WARNING THAT YOU SAW, YOU UNDERSTOOD THAT TO MEAN THAT THE GOVERNMENT WAS TELLING YOU THAT SMOKING POSED A RISK OF SERIOUS DISEASE; ISN'T THAT RIGHT?

A. YES.

Q. ALL RIGHT, SIR. AND WHILE YOU WERE GROWING UP IN VENTURA COUNTY, YOU HEARD THAT SMOKING COULD CAUSE DISEASES FROM THINGS OTHER THAN JUST THE SURGEON GENERAL'S WARNING; ISN'T THAT TRUE?

A. REPEAT THAT, PLEASE.

Q. SURE. WHILE YOU WERE GROWING UP IN VENTURA COUNTY, YOU HEARD THAT SMOKING POSED A RISK FOR SERIOUS DISEASE FROM PLACES OTHER THAN THE SURGEON GENERAL'S WARNING; ISN'T THAT TRUE?

A. I DON'T KNOW IF I CAN ANSWER THAT, IF IT'S TRUE. YOU'RE ASKING ME IF OTHER PEOPLE. PROBABLY, YES.

Q. LET ME --

A. THAT'S A PROBABLY.

Q. ALL RIGHT, SIR. I DIDN'T MEAN TO INTERRUPT. I APOLOGIZE. LET ME BREAK IT DOWN FOR YOU.

SIR, YOU REMEMBER THE AMERICAN CANCER SOCIETY WHILE YOU WERE GROWING UP TELLING THE PUBLIC THAT SMOKING POSED A RISK FOR SERIOUS DISEASE; ISN'T THAT RIGHT?

A. YES.

Q. IN FACT, I BELIEVE YOU TOLD US THAT YOU CAN REMEMBER YOU THOUGHT EVERYBODY HAD HEARD THAT THE AMERICAN CANCER SOCIETY SAID, "NO, DON'T SMOKE" WHILE YOU WERE GROWING UP?

MR. BROWN: OBJECTION AS TO TIME.

3027

THE COURT: AS TO TIME. I BELIEVE YOU TOLD US -- IS IT THE TIME THAT HE TOLD US?

MR. BROWN: NO.

THE COURT: IS THAT THE OBJECTION.

MR. BROWN: IT'S THE TIME AS TO WHAT HE TOLD HER. I DON'T KNOW IF --

THE COURT: WHY DON'T YOU PUT THIS IN SOME TIME FRAME. I'LL GIVE YOU SOME LATITUDE.

WE NEED TO KNOW APPROXIMATELY WHEN WE ARE TALKING ABOUT.

MS. MASON: THANK YOU, YOUR HONOR.

Q. MR. WHITELEY, WHILE YOU WERE GROWING UP IN VENTURA COUNTY AS A TEENAGER, YOU THOUGHT EVERYBODY HEARD THE AMERICAN CANCER SOCIETY SAY, "NO, DON'T SMOKE"; ISN'T THAT RIGHT?

A. I DON'T KNOW I COULD SAY "EVERYBODY."

Q. YOU DON'T RECALL?

A. YOU ARE PUTTING "EVERYBODY." THAT WOULD BE A NO, IF THAT'S EVERYBODY.

Q. ALL RIGHT.

A. HOW CAN I ANSWER EVERYBODY?

Q. SIR, WHY DON'T YOU LOOK -- DO YOU HAVE YOUR DEPOSITION IN FRONT OF YOU?

PAGE 56. I PROPOSE TO READ PAGE 56, LINE 25 THROUGH 57, LINE 4.

MR. BROWN: 67?

MS. MASON: 57.

THE COURT: 57, LINE 25 IS AN ANSWER. EXCUSE

3028

ME.

DID YOU SAY 56, LINE 25?

MS. MASON: I DID, YOUR HONOR.

THE COURT: WHAT?

MS. MASON: 56, LINE 24.

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THE COURT: 24.
MS. MASON: THANK YOU.
THROUGH 57, LINE 4.
THE COURT: YOU WANT LINE 24? YOU WANT TO START THERE WITH THAT QUESTION?
MS. MASON: YES, YOUR HONOR.
THE COURT: ALL RIGHT. LET'S SEE IF THERE IS AN OBJECTION.
MS. MASON: I CAN START WITH LINE 16.
THE COURT: THERE IS NO CONTEXT TO IT. IF YOU GO BACK FURTHER --
THE COURT: IS THERE ANY OBJECTION TO 56, LINE 16?
MR. BROWN: 16?
THE COURT: I THINK NOW WE ARE AT 56, LINE 16 THROUGH 57, LINE 4, RIGHT? THAT'S WHAT YOU WANT TO READ?
MS. MASON: YES, YOUR HONOR.
MR. BROWN: NO OBJECTION.
THE COURT: YOU MAY DO THAT.
MS. MASON: Q. DO YOU HAVE, MR. WHITELEY, PAGE 56 THERE IN FRONT OF YOU?
A. YES.
Q. ALL RIGHT. BEGINNING ON LINE 16.

3029

"QUESTION: NOW, AGAIN, IN ADDITION TO WHAT YOU CALLED AND WE NOW HAVE BEEN CALLING GOVERNMENT-REGULATED WARNINGS CONCERNING SMOKING OR CIGARETTES, DID YOU NOT ALSO SEE AND NOTICE SOME OTHER STATEMENTS MADE BY PEOPLE OR ORGANIZATIONS INDICATING THAT THOSE PEOPLE OR ORGANIZATIONS FELT THAT SMOKING WAS BAD FOR PEOPLE OR THAT SMOKING CAUSED A HEALTH RISK FOR DISEASE OR ILLNESS?
"ANSWER: AT ANY TIME? FROM --
"QUESTION: BEFORE YOUR WIFE WAS DIAGNOSED.
"ANSWER: BEFORE MY WIFE WAS DIAGNOSED? I'VE SEEN LIKE THE AMERICAN CANCER SOCIETY.
"QUESTION: SURE.
"ANSWER: I THINK EVERYBODY HAS SEEN THEM SAYING 'NO, DON'T SMOKE.'"
DID I READ THAT CORRECTLY, MR. WHITELEY?
A. YES.
Q. ALL RIGHT, SIR.
AND YOU HEARD PEOPLE OTHER THAN THE AMERICAN CANCER SOCIETY SAYING THAT SMOKING POSED A RISK OF SERIOUS DISEASE, DIDN'T YOU, SIR, WHILE YOU WERE GROWING UP IN VENTURA COUNTY?
A. OTHER THAN THE AMERICAN CANCER SOCIETY?
Q. YES.
A. THE SURGEON GENERAL. THAT'S THE ONES I CAN THINK OF. I UNDERSTAND THAT WAS THEIR POSITION.
Q. SIR, DO YOU REMEMBER SEEING PUBLIC SERVICE

3030

ANNOUNCEMENTS FROM THE AMERICAN HEART AND LUNG ASSOCIATION?
A. YES.
MR. BROWN: OBJECTION TO TIME, PLEASE.
THE COURT: AS TO WHEN?
MS. MASON: WHILE HE WAS GROWING UP IN VENTURA COUNTY.
THE COURT: THAT'S HOW YOU UNDERSTOOD THE QUESTION?
THE WITNESS: THAT'S WHAT I UNDERSTOOD.
THE COURT: ALL RIGHT. I WILL ALLOW IT.

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THE WITNESS: CAN I ANSWER THAT?
THE COURT: YES. I THINK YOU ALREADY DID.
THE WITNESS: YES. THAT WAS THEIR POSITION ON IT. THAT WAS THEIR POSITION.
MS. MASON: Q. THESE PUBLIC SERVICE ANNOUNCEMENTS THAT YOU SAW WHILE YOU WERE GROWING UP FROM THE AMERICAN HEART AND LUNG ASSOCIATION TELLING YOU THAT SMOKING CAUSED SERIOUS DISEASE, YOU THOUGHT THAT THE AMERICAN HEART AND LUNG SOCIETY WAS GENUINE IN THEIR BELIEF IN THOSE PUBLIC SERVICE ANNOUNCEMENTS, DIDN'T YOU, SIR?
A. YES. THAT WAS THEIR POSITION.
Q. SIR, AS A TEENAGER, WHILE YOU WERE GROWING UP IN VENTURA COUNTY, YOU HEARD CIGARETTES REFERRED TO AS COFFIN NAILS; ISN'T THAT RIGHT?
A. WE HEARD THAT.
Q. AND ISN'T IT ALSO TRUE, SIR, THAT WHILE YOU WERE GROWING UP IN VENTURA COUNTY, YOU ALSO HEARD CIGARETTES REFERRED TO AS CANCER STICKS?

3031

A. YES, WE HEARD THAT.
Q. ALL RIGHT, SIR. .
MR. WHITELEY, ISN'T IT TRUE THAT BY THE TIME THAT YOU WERE 25 YEARS OLD, YOU HAD A CONCERN ABOUT THE POTENTIAL EFFECTS THAT SMOKING WAS HAVING ON YOUR OWN HEALTH; ISN'T THAT RIGHT, SIR?
A. WELL, I HAD A COUGH.
Q. AND YOU THOUGHT AS EARLY AS 25 YEARS OLD THAT SMOKING WAS AFFECTING YOUR HEALTH; ISN'T THAT RIGHT, SIR?
A. I HAD A COUGH.
Q. IS THE ANSWER TO MY QUESTION YES, SIR?
A. I HAD A COUGH.
Q. DOES THAT MEAN THAT YOU THOUGHT SMOKING WAS AFFECTING YOUR HEALTH?
A. YES, TO THE POINT OF HAVING A COUGH.
Q. ALL RIGHT, SIR.
YOU TURNED 25 YEARS OLD IN 1983; AM I RIGHT?
A. YEAH, I GUESS.
Q. YOU STARTED DATING LESLIE, YOUR WIFE, IN 1983; ISN'T THAT TRUE, SIR?
A. YES.
Q. ALL RIGHT. SIR, LET'S FOCUS FOR A MINUTE, IF WE CAN ABOUT SOME OF THE SMOKING RULES THAT YOU AND YOUR WIFE LESLIE HAD IN YOUR HOME.
YOU AND YOUR WIFE HAD MADE A POLICY, HAVEN'T YOU, SIR, EVER SINCE YOUR FIRST CHILD WAS BORN NOT TO SMOKE IN FRONT OF THEM; ISN'T THAT RIGHT?
A. NO.

3032

Q. THAT'S NOT RIGHT; YOU HAVEN'T HAD A POLICY?
A. NOT TO SMOKE? WE SMOKED IN FRONT OF THEM.
Q. ALL RIGHT, SIR.
A. YOU ARE SAYING "IN FRONT OF THEM." WE GO OUTSIDE.
Q. OKAY. YOU TRIED TO KEEP THE SMOKING AWAY FROM YOUR CHILDREN; ISN'T THAT RIGHT?
A. TO SOME DEGREE. WE'D GO OUTSIDE MOSTLY BECAUSE WE DIDN'T WANT TO GO INSIDE AND SMOKE. WE'D SMOKE OUT ON THE PATIO.
Q. OKAY, SIR. IS IT YOUR TESTIMONY THAT YOU TRIED TO NOT SMOKE AROUND YOUR CHILDREN?
A. YES.
Q. AND YOU WOULD ACCOMPLISH THAT BY SMOKING OUTSIDE?
A. YES.

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Q. OKAY. AND THE REASON FOR THAT, SIR, IS BECAUSE YOU DIDN'T THINK IT WAS HEALTHY FOR YOUR CHILDREN TO BREATHE THE SMOKE; ISN'T THAT RIGHT?
A. YEAH. WE THOUGHT IT WASN'T A GOOD IDEA FOR THEM TO BREATHE THE SMOKE, YES.
Q. YOU MAINTAINED THAT PRACTICE EVER SINCE YOUR FIRST CHILD WAS BORN IN 1989; AM I RIGHT?
IN FACT SIR, I THINK YOU TOLD US IN YOUR DEPOSITION --
MR. BROWN: OBJECT TO THAT PROCEDURE.
THE COURT: OVER AN OBJECTION, AND WE KNOW MR. BROWN IS GOING TO MAKE IT, THAT FORM OF QUESTION IS NOT PERMITTED.

3033

MS. MASON: ALL RIGHT. THANK YOU.
Q. MR. WHITELEY, ISN'T IT TRUE THAT YOU BELIEVE IT'S JUST COMMON SENSE TO KEEP SMOKE AWAY FROM SMALL CHILDREN?
A. YES.
Q. LET'S FOCUS OUR ATTENTION ON WHAT YOUR DOCTORS AND FAMILY MEMBERS HAVE SAID TO YOU ABOUT SMOKING.
DR. JUNG USED TO BE YOUR FAMILY PHYSICIAN; ISN'T THAT TRUE?
A. YES.
Q. THAT'S J-U-N-G, RIGHT; DR. JUNG?
A. YES.
Q. SIR, HE TREATED BOTH YOU AND MRS. WHITELEY, ISN'T THAT TRUE, YOUR WIFE?
A. YES.
Q. HE WAS YOUR FAMILY PHYSICIAN FOR A WHILE?
A. YES.
Q. AND DR. JUNG IS WHAT YOU CALL AN ANTI-SMOKING DOCTOR; ISN'T THAT RIGHT?
A. YES.
Q. IN FACT, SIR, HE BUGGED YOU TO QUIT SMOKING JUST ABOUT EVERY TIME YOU WENT TO SEE HIM; ISN'T THAT TRUE?
A. YES.
Q. ALL RIGHT, SIR. IN 1986, DR. JUNG DIAGNOSED YOU WITH HIGH BLOOD PRESSURE; ISN'T THAT RIGHT?
A. YES, SOMETHING LIKE THAT.
Q. AND HE TOLD YOU TO QUIT SMOKING AT THAT TIME, DIDN'T HE, SIR?
A. YES.

3034

Q. AND HE TOLD YOU THAT YOUR SMOKING WAS HAVING THE EFFECT OF CAUSING YOU TO HAVE HIGH BLOOD PRESSURE; ISN'T THAT RIGHT?
A. HE SAID IT COULD -- IF I QUIT SMOKING, IT COULD COME DOWN.
BUT HE ALSO SAID IT WAS GENETICS TOO ON MY HIGH BLOOD PRESSURE.
Q. AND HE TOLD YOU THAT SMOKING WAS CONTRIBUTING TO THIS GENETIC PREDISPOSITION FOR HIGH BLOOD PRESSURE; ISN'T THAT RIGHT?
A. YES.
Q. ALL RIGHT, SIR. THAT WAS 13 YEARS AGO THAT DR. JUNG TOLD YOU THIS?
A. YES.
Q. AND YOU WENT HOME THAT NIGHT AND TOLD YOUR WIFE LESLIE WHAT DR. JUNG HAD TOLD YOU; ISN'T THAT TRUE?
A. YES.
Q. AND IN FACT, LESLIE, YOUR WIFE, WASN'T SURPRISED AT ALL THAT DR. JUNG HAD LINKED YOUR HIGH BLOOD PRESSURE WITH SMOKING; ISN'T THAT TRUE?

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A. I'M NOT SURE. I DON'T REMEMBER THAT OCCASION.
Q. YOU DON'T REMEMBER TELLING HER ABOUT THAT?
A. I REMEMBER TELLING HER, BUT I DON'T REMEMBER WHAT HER REACTION WAS.
Q. WHY DON'T YOU TURN TO PAGE 109 OF YOUR DEPOSITION, BEGINNING ON LINE 16, THROUGH 110, LINE 7.
MR. BROWN: I'M SORRY?
THE WITNESS: WHAT LINE?

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MS. MASON: THE NEXT PAGE, 110, LINE 7.
THE WITNESS: 110, LINE 7?
THE COURT: LINE 7 IS NOT THE END OF AN ANSWER.
MS. MASON: LINE 8. I'M SORRY.
MR. BROWN: LINE 8.
THE WITNESS: 109?
THE COURT: SHE WANTS TO READ FROM 109, LINE 16 TO 110, LINE 8.
THE QUESTION IS: IS THERE ANY OBJECTION TO IT?
MR. BROWN: I THINK IT OUGHT TO GO THROUGH LINE 11, YOUR HONOR.
THE COURT: ANY OBJECTION?
MS. MASON: NO.
THE COURT: ALL RIGHT. THEN WHY DON'T YOU READ THROUGH LINE 11.
MS. MASON: ALL RIGHT.
Q. MR. WHITELEY, YOU HAVE PAGE 109 THERE IN FRONT OF YOU?
A. YES.
Q. BEGINNING ON LINE 16.
"QUESTION: BUT YOU ALSO TOLD HER ABOUT WHAT THE DOCTOR SUGGESTED CONCERNING QUITTING SMOKING AND THE FACT THAT THAT WOULD ASSIST WITH YOUR ELEVATED BLOOD PRESSURE, CORRECT?
"ANSWER: YEAH.
"QUESTION: AND WHAT WAS HER REACTION TO THAT? DID SHE SAY, 'WELL, DON'T WORRY ABOUT IT, JUST KEEP SMOKING'?

3036

"ANSWER: NO. WE'D NEVER REALLY TALK A WHOLE LOT. IT WAS --
"QUESTION: DID --
"ANSWER: I THINK THAT GOES RIGHT BACK INTO THE ADDICTION THING. YOU KNOW, WHEN YOU'RE ADDICTED TO SOMETHING, YOU KNOW -- YOU KNOW, IT'S LIKE, I'M NOT GOING TO BUG HER TO QUIT BECAUSE I KNOW SHE IS HOOKED ON THE STUFF.
"QUESTION: DID SHE SEEM AT ALL SHOCKED OR SURPRISED THAT A DOCTOR WOULD ADVISE YOU THAT SMOKING WAS BAD FOR YOU, AT LEAST IN TERMS OF AFFECTING YOUR HIGH BLOOD PRESSURE.
"ANSWER: NO, IT DIDN'T SEEM TO -- I DIDN'T NOTICE ANY DIFFERENCE THERE.
"QUESTION: NOW --
"ANSWER: IT WAS SOMETHING THAT WAS CONTROLLED UNDER THE MEDICATION, SO IT WAS NO --"
SIR, DID I READ THAT CORRECTLY?
A. YES.
Q. ALL RIGHT. AND SO, SIR, YOUR WIFE WASN'T AT ALL SURPRISED WHEN YOU CAME HOME AND TOLD HER THAT DR. JUNG ASKED YOU TO QUIT SMOKING TO HELP YOU CONTROL YOUR BLOOD PRESSURE; ISN'T THAT RIGHT?
A. YES.
Q. AND SIR, DR. RICHARDSON IS THE DOCTOR THAT

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DELIVERED ALL FOUR OF YOUR CHILDREN; IS THAT RIGHT?
A. YES.
Q. DR. RICHARDSON TOLD YOUR WIFE TO QUIT SMOKING
3037
DURING EACH PREGNANCY?
A. I DON'T RECALL IF HE DID OR NOT.
Q. YOU HAVE NOT READ HIS DEPOSITION IN THIS CASE?
A. NO.
Q. ALL RIGHT. AND YOUR OLDER SON, I THINK YOU TOLD
US HIS NAME IS TROY?
A. YES.
Q. TROY IS 10 YEARS OLD?
A. HE'S ACTUALLY 11.
Q. HE'S 11 NOW?
A. HE JUST TURNED 11.
Q. ALL RIGHT. AND TROY DIDN'T LIKE THE FACT THAT
YOU WERE SMOKING AT ALL, DID HE, SIR?
A. NO.
Q. IN FACT, TROY DIDN'T LIKE THE FACT THAT YOU WERE
SMOKING BECAUSE HE HAD LEARNED IN SCHOOL THAT SMOKING WAS
BAD FOR YOU; ISN'T THAT RIGHT?
A. YES. AT THAT POINT, YES.
Q. HE ASKED YOU TO QUIT SMOKING; ISN'T THAT TRUE,
SIR?
A. YES.
Q. LET'S TALK FOR A BIT, MR. WHITELEY, ABOUT YOUR
WIFE LESLIE.
YOU CONSIDER HER AN INTELLIGENT PERSON, DON'T
YOU, SIR?
A. YES.
Q. AND YOU CONSIDER HER TO BE AN INFORMED WOMAN
GENERALLY; ISN'T THAT RIGHT?
3038
A. YES.
Q. AND YOU'VE ALWAYS CONSIDERED HER TO BE A
STRONG-WILLED INDIVIDUAL; IS THAT RIGHT, SIR?
A. YES.
Q. AND SHE'S CERTAINLY CAPABLE OF MAKING DECISIONS
AND FOLLOWING THROUGH ON THEM; IS THAT RIGHT?
A. YES.
Q. ALL RIGHT, SIR.
YOU DISCUSSED WITH MR. BROWN BRIEFLY A MINUTE AGO
ABOUT SOME OF THE QUIT ATTEMPTS YOU AND MRS. WHITELEY HAD
MADE TO QUIT SMOKING; IS THAT RIGHT?
A. YES.
Q. I'D LIKE TO TAKE THOSE IN ORDER, SIR.
OTHER THAN THE ONES WHERE YOU SAID YOU TRIED TO
QUIT FOR AN HOUR OR SO, AS I UNDERSTAND IT, YOU YOURSELF
MADE THREE QUIT ATTEMPTS, THREE ATTEMPTS TO QUIT SMOKING,
SERIOUS ONES; IS THAT RIGHT, SIR?
A. YES.
Q. ALL RIGHT. LET'S TALK ABOUT THE FIRST OCCASION
WHEN YOU AND YOUR WIFE DECIDED TO QUIT SMOKING.
AND THAT WAS ON A CAMPING TRIP TO YOSEMITE; IS
THAT RIGHT, SIR?
A. YES.
Q. AND WAS TROY BORN AT THE TIME OF THIS CAMPING
TRIP, YOUR SON TROY?
A. I DON'T REMEMBER IF HE WAS OR NOT. IT WAS IN
THAT TIME FRAME, BUT I DON'T REMEMBER EXACTLY.
Q. AND HE WAS BORN IN 1989; IS THAT CORRECT, SIR?
3039
A. '89.

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Q. SO IT PROBABLY WAS A LITTLE BIT BEFORE HE WAS BORN?
A. I DON'T REMEMBER EXACTLY.
Q. THAT'S ALL RIGHT. OKAY.
AND LET'S FOCUS ON THAT QUIT ATTEMPT DURING YOUR CAMPING TRIP TO YOSEMITE.
SIR, YOU HAD A COUGH AT THAT TIME; ISN'T THAT RIGHT?
A. YES.
Q. AND SIR, ISN'T IT TRUE THAT IT WAS YOUR IDEA TO QUIT SMOKING BECAUSE OF YOUR COUGH?
A. YES.
Q. ALL RIGHT. YOU ASKED YOUR WIFE LESLIE TO QUIT SMOKING WITH YOU, DIDN'T YOU, SIR?
A. YES.
Q. AND SHE WANTED TO BE SUPPORTIVE OF THAT DECISION TO QUIT SMOKING AND SHE DECIDED TO QUIT SMOKING AS WELL; ISN'T THAT TRUE?
A. YES.
Q. AND WHAT YOU DID, YOU AND MRS. WHITELEY DID DURING THIS FIRST QUIT ATTEMPT IN ORDER TO QUIT SMOKING WAS, YOU GOT RID OF YOUR CIGARETTES; ISN'T THAT TRUE?
A. YEAH. WE JUST WE GOT IN THE CAR, TOOK OFF DRIVING, WENT ON OUR CAMPING TRIP.
Q. LEFT YOUR CIGARETTES BEHIND?
A. YES.
Q. DID YOU ACTUALLY THROW YOUR CIGARETTES AWAY?

3040

A. I DON'T REMEMBER WHAT WE DID WITH THEM.
Q. SIR, YOU DIDN'T THROW AWAY YOUR ASHTRAYS OR GET RID OF YOUR ASHTRAYS, DID YOU?
A. I DON'T REALLY REMEMBER.
Q. AND YOU DIDN'T TRY TO USE A NICOTINE PATCH DURING THIS TIME PERIOD; IS THAT RIGHT?
A. NO. I DON'T KNOW EVEN IF THEY HAD THE PATCH AT THAT POINT. THEY MIGHT HAVE, BUT I THINK IF THEY DID, IT WAS THROUGH A DOCTOR. I'M NOT SURE.
Q. YOU DIDN'T GO TO A DOCTOR AND ASK FOR THE NICOTINE PATCH; ISN'T THAT RIGHT?
A. NO.
Q. AND NEITHER DID YOUR WIFE LESLIE; IS THAT RIGHT?
A. YES.
Q. YOU DIDN'T USE NICOTINE GUM DURING THIS QUIT ATTEMPT; ISN'T THAT RIGHT, SIR?
A. THAT'S RIGHT.
Q. AND NEITHER DID YOUR WIFE LESLIE?
A. YES.
Q. YOU DIDN'T SEEK ANY MEDICAL ASSISTANCE AT ALL DURING THIS QUIT ATTEMPT, DID YOU, SIR?
A. NO.
Q. I'M SORRY?
A. NO, I DIDN'T.
Q. THANK YOU.
AND NEITHER DID YOUR WIFE LESLIE; ISN'T THAT RIGHT, SIR?
A. YES.

3041

Q. YOU DIDN'T SEEK ANY COUNSELING OF ANY KIND IN THIS EFFORT TO QUIT SMOKING, DID YOU, SIR?
A. NO.
Q. AND NEITHER DID YOUR WIFE LESLIE?
A. NO.
Q. AND SIR, NEITHER YOU NOR YOUR WIFE LESLIE TOLD

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YOUR FAMILY AND FRIENDS THAT YOU WERE TRYING TO QUIT SMOKING; ISN'T THAT TRUE?

A. YEAH. WE DIDN'T TELL ANYBODY.

Q. I THINK, MR. WHITELEY, YOU -- AND IF I RECALL THIS CORRECTLY -- YOU AND MRS. WHITELEY LEANED ON EACH OTHER DURING THIS QUIT ATTEMPT?

A. YES.

Q. SIR, DURING THIS QUIT ATTEMPT, SHE NEVER COMPLAINED TO YOU ABOUT ANY PHYSICAL PROBLEMS OR SYMPTOMS, DID SHE?

A. YEAH. SHE WAS GROUCHY. YEAH, SHE CRAVED CIGARETTES.

Q. OTHER THAN BEING GROUCHY, SIR, SHE NEVER COMPLAINED TO YOU ABOUT ANY PHYSICAL SYMPTOMS?

A. WELL, SHE WANTED A CIGARETTE. THAT'S FOR DARN SURE. SHE WAS GROUCHY. SHE WAS EXPERIENCING ALL THOSE WITHDRAWAL SYMPTOMS THAT YOU DO WHEN YOU QUIT SMOKING.

Q. DO YOU STILL HAVE YOUR DEPOSITION UP THERE, SIR?

TURN WITH ME TO PAGE 192, LINES 5 THROUGH 9.

MR. BROWN: WELL, I THINK THAT'S A LITTLE SHORT. I THINK SHE OUGHT TO READ DOWN -- LET ME JUST SEE WHERE I THINK SHE OUGHT TO GO TO.

3042

THE COURT: THE NEXT LINE GOES ON TO A DIFFERENT SUBJECT, MR. BROWN.

I'M GOING TO LET HER READ THIS.

GO AHEAD.

MS. MASON: THANK YOU.

"QUESTION: WHAT PHYSICAL SYMPTOMS DID YOUR WIFE COMPLAIN OF DURING THE TIME PERIOD WHEN SHE WAS FIRST ATTEMPTING TO QUIT SMOKING?

"ANSWER: I DON'T KNOW IF SHE ACTUALLY COMPLAINED OF ANYTHING. SHE WAS JUST BEING A REGULAR GRUMP."

Q. WAS THAT THE ANSWER, SIR, YOU GAVE TO THAT QUESTION?

A. YES.

Q. AND SIR, DURING THIS QUIT ATTEMPT THAT WE HAVE BEEN TALKING ABOUT, YOU WERE ACTUALLY SUCCESSFUL LONGER IN QUITTING SMOKING THAN YOUR WIFE LESLIE WAS; ISN'T THAT TRUE, SIR?

A. YES.

Q. AND SIR, YOU DON'T KNOW FOR SURE WHETHER SHE ACTUALLY QUIT SMOKING DURING THIS TIME PERIOD, DO YOU?

A. SHE DIDN'T SMOKE IN MY PRESENCE ON THE TRIP.

Q. YOU WOULDN'T KNOW?

A. SHE DIDN'T -- YES, SHE QUIT SMOKING FOR THE DURATION OF THAT TRIP.

Q. AND YOU DON'T KNOW WHETHER SHE'D SNEAK A CIGARETTE DURING THAT QUIT ATTEMPT, DO YOU, SIR?

A. WELL, IF SHE SNUCK A CIGARETTE, I WOULDN'T KNOW

3043

IT.

SHE DIDN'T HAVE ANY CIGARETTE SMELL ON HER, SO I ASSUMED THAT SHE DIDN'T SMOKE.

Q. BUT SHE WAS TRYING TO BE SUPPORTIVE OF YOUR ATTEMPT TO QUIT SMOKING; ISN'T THAT RIGHT, SIR?

A. YES.

Q. ALL RIGHT. BUT SHE BECAME LESS SUPPORTIVE OF YOUR ATTEMPTS TO QUIT SMOKING OVER TIME, DIDN'T SHE, SIR?

A. THERE WAS ONLY ONE OTHER TIME.

Q. LET'S TALK ABOUT THAT OTHER TIME.

THIS WAS IN 1994, WHEN DR. JUNG TOLD YOU THAT YOU

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WERE ON THE FAST ROAD TO EMPHYSEMA; ISN'T THAT RIGHT, SIR?
A. YES.
Q. IN FACT, THOSE WERE HIS WORDS, WEREN'T THEY?
A. YES.
Q. THE DOCTOR TOLD YOU -- DR. JUNG TOLD YOU AT THIS TIME THAT SMOKING COULD CAUSE EMPHYSEMA; ISN'T THAT TRUE?
A. YES.
Q. AND WHEN YOU CAME HOME THAT NIGHT, YOU TOLD LESLIE WHAT DR. JUNG HAD TOLD YOU; ISN'T THAT TRUE?
A. YES.
Q. AND LESLIE WASN'T AT ALL SURPRISED OR SHOCKED THAT A DOCTOR TOLD YOU THAT SMOKING COULD CAUSE EMPHYSEMA; ISN'T THAT RIGHT?
A. WELL, I DON'T KNOW ABOUT THAT, BUT SHE TOLD ME IF I WOULD QUIT SMOKING, THAT SHE SHOULD QUIT SMOKING IF DR. JUNG SAID I WAS ON THE FAST ROAD TO EMPHYSEMA.
Q. SHE DIDN'T SEEM SURPRISED OR SHOCKED TO LEARN,

3044

DID SHE, SIR, THAT A DOCTOR TOLD YOU THAT SMOKING COULD CAUSE EMPHYSEMA?
A. SHE WAS SURPRISED THAT THAT'S WHAT THE DOCTOR TOLD ME.
Q. ALL RIGHT, SIR. LET'S --
A. SHE WAS CONCERNED. I GUESS "CONCERN" WOULD BE THE WORD -- THE CORRECT WORD TO USE.
Q. SIR, LET ME JUST MAKE SURE YOU'RE UNDERSTANDING WHAT I'M ASKING YOU.
WHEN YOU CAME HOME THAT AFTERNOON OR THAT EVENING AND TOLD LESLIE THAT DR. JUNG HAD TOLD YOU THAT SMOKING CAUSES EMPHYSEMA, MY QUESTION TO YOU, SIR, IS: THAT NEWS, THAT A DOCTOR HAD SAID THAT SMOKING CAUSES EMPHYSEMA, DIDN'T SURPRISE YOUR WIFE AT ALL, DID IT? THAT'S MY QUESTION.
A. I DON'T KNOW IF I CAN ANSWER THAT.
SHE WAS CONCERNED. "SURPRISE" IS -- YOU KNOW, SHE WAS CONCERNED. THAT'S THE WAY TO ANSWER THAT QUESTION.
Q. I'M SURE, SIR, SHE WAS CONCERNED ABOUT YOUR HEALTH.
A. I MEAN, SURPRISE. I WOULD SAY NO, BECAUSE SHE WASN'T SURPRISED. SHE WAS CONCERNED.
Q. JUST SO WE ARE UNDERSTANDING EACH OTHER, YOUR WIFE LESLIE WAS NOT SURPRISED THAT YOU LEARNED FROM A DOCTOR THAT SMOKING COULD CAUSE EMPHYSEMA; IS THAT RIGHT?
A. SHE WAS CONCERNED HEARING THAT NEWS.
Q. ALL RIGHT, SIR.
WILL YOU TURN WITH ME --
A. WHEN YOU SAY "SURPRISED," IT SOUNDS LIKE -- TO

3045

ME, YOU SOUND LIKE YOU'RE TRYING TO SAY SHE ALREADY THOUGHT I WAS GOING TO HAVE EMPHYSEMA.
THAT'S NOT THE CASE. SHE WAS SURPRISED THAT THE DOCTOR TOLD ME THAT.
Q. SHE WAS SURPRISED THAT YOU, IN FACT, HAD EMPHYSEMA?
A. I DON'T HAVE EMPHYSEMA.
Q. YOU WERE ON THE FAST ROAD TO EMPHYSEMA; THAT WAS NOT SOMETHING SHE --
A. SHE WAS CONCERNED. SHE WAS CONCERNED AND WORRIED ABOUT THAT.
Q. CORRECT, SIR. BUT MY QUESTION, SIR, IS REALLY A LITTLE BIT DIFFERENT.
MY QUESTION TO YOU IS: THE FACT THAT A DOCTOR HAD SAID SMOKING CAUSES EMPHYSEMA WAS NOT SOMETHING THAT WAS SURPRISING TO YOUR WIFE IN 1994; ISN'T THAT TRUE?

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A. WELL, LIKE I SAID, SHE WAS SURPRISED. SHE WAS CONCERNED THAT THE DOCTOR TOLD ME THAT.
Q. ALL RIGHT. LET'S TURN TO PAGE 112 OF YOUR DEPOSITION, MR. WHITELEY.
I PROPOSE TO READ LINES 13 THROUGH 16.
A. 112?
Q. 112.
THE COURT: ANY OBJECTION?
MR. BROWN: I MIGHT. I HAVEN'T FOUND IT YET. WHAT LINES?
THE COURT: 13 TO 16.
MR. BROWN: WHAT WAS IT? 13 TO WHAT?

3046

MS. CHABER: 16.
THE COURT: ANY OBJECTION?
MR. BROWN: NO, YOUR HONOR.
THE COURT: THREE LINES. NO OBJECTION?
MR. BROWN: NO OBJECTION.
THE COURT: OKAY. YOU MAY READ.
MS. MASON: "QUESTION: DID SHE SEEM SHOCKED OR SURPRISED THAT A DOCTOR WOULD TELL YOU THAT SMOKING WAS CAUSING OR CONTRIBUTING TO A SITUATION THAT MIGHT LEAD TO EMPHYSEMA?
"ANSWER: NO."
Q. SIR, THAT'S THE ANSWER YOU GAVE TO THAT QUESTION?
A. YES. THAT'S THE ANSWER I GAVE TO THAT QUESTION.
Q. ALL RIGHT, SIR.
IN FACT, SHE AGREED WITH DR. JUNG AT THIS TIME, DIDN'T SHE, SIR, AND TOLD YOU THAT SHE THOUGHT YOU OUGHT TO QUIT SMOKING?
A. YES.
Q. IN FACT, SHE WENT SO FAR AS TO TELL YOU, IF A DOCTOR HAD TOLD HER THAT, HAD TOLD HER THAT SHE HAD EMPHYSEMA, SHE WOULD QUIT SMOKING; ISN'T THAT TRUE?
A. YES.
Q. AND YOU ASKED LESLIE TO QUIT SMOKING WITH YOU; ISN'T THAT TRUE, SIR?
A. YES.
Q. AND SHE TOLD YOU THAT YOU WERE THE ONE WITH THE COUGH, SHE DIDN'T HAVE A PROBLEM, SO SHE WASN'T GOING TO QUIT; IS THAT RIGHT?

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A. SHE TOLD ME THAT SHE SMOKED LIGHT CIGARETTES, THAT SHE WAS IN GOOD HEALTH, SHE -- YOU KNOW, SHE HAD -- SHE LOOKED REALLY GOOD. SHE ATE VEGETABLES AND THAT SHE HAD LOW BLOOD PRESSURE, THAT THE DOCTOR HAD TOLD HER SHE HAD LOW BLOOD PRESSURE. SHE DIDN'T HAVE A PROBLEM.
Q. SIR, WHY DON'T YOU TURN WITH ME TO PAGE 120 OF YOUR DEPOSITION, LINES 15 THROUGH 23. I GUESS WE BETTER START AT 13.
I PROPOSE TO READ PAGE 120, LINE 13 THROUGH PAGE 121, LINE 1. OR LINE 3. I'M SORRY.
DO YOU WANT ME TO DO THAT AGAIN? I APOLOGIZE.
PAGE 120, LINE 13 TO 121, LINE 3.
MR. BROWN: I THINK, FOR CONTEXT, YOU HAVE TO GO BACK BEFORE THAT.
MS. MASON: I CAN START AT LINE 15.
THE COURT: HE WANTS YOU TO GO BACK FURTHER, NOT LATER.
MR. BROWN: I THINK YOU OUGHT TO GO BACK. TO PUT THIS IN CONTEXT, GO BACK TO THE LAST PAGE.
THE COURT: I'M NOT GOING TO DO THAT.
YOU GO AHEAD. READ WHAT YOU PROPOSE TO READ.

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MS. MASON: THANK YOU, YOUR HONOR.
"QUESTION: -- HAVE A BACK-AND-FORTH DISCUSSION ABOUT IT. OKAY.
"NEVERTHELESS, THERE WAS A TIME, WAS THERE NOT, WHEN YOU SUGGESTED TO LESLIE THAT YOU AND SHE OUGHT TO QUIT SMOKING?
"ANSWER: SUGGESTED THAT I SHOULD QUIT SMOKING.

3048

I SUGGESTED THAT I WISHED SHE WOULD QUIT WITH ME. THAT WOULD HELP ME QUIT SMOKING.
"QUESTION: WHEN WAS THAT?
"ANSWER: IT WAS ABOUT THE TIME THAT DR. JUNG TOLD ME THAT I WAS GOING TO -- I WAS ON A FAST ROAD TO EMPHYSEMA.
"QUESTION: WHAT WAS HER REACTION TO YOUR SUGGESTION?
"ANSWER: HER REACTION WAS THAT SHE DIDN'T HAVE A PROBLEM, THAT I WAS THE ONE WITH THE COUGH.
"QUESTION: AND WHAT ELSE WAS SAID BY EITHER OF YOU?
"ANSWER: I THINK WE JUST KIND OF LEFT IT AT THAT."
Q. SIR, DID I READ THAT CORRECTLY?
A. YES.
Q. ALL RIGHT. SO YOU MADE A SECOND ATTEMPT TO QUIT SMOKING AT THIS TIME, DIDN'T YOU, SIR, IN 1994, AFTER --
A. YEAH. YEAH. YES. THIS TIME THAT WE ARE TALKING ABOUT, YES.
Q. YES, SIR.
YOU DECIDED LESLIE DIDN'T WANT TO STOP, BUT YOU WANTED TO, SO YOU TRIED TO QUIT ON YOUR OWN; ISN'T THAT TRUE?
A. YES. YES.
Q. ALL RIGHT, SIR.
A. WHAT I SAID EARLIER, THAT WAS PART OF THE CONVERSATION. I JUST DIDN'T GET THAT INTO THE DEPOSITION

3049

HERE.
Q. OKAY.
A. SO --
Q. AND IN THIS QUIT ATTEMPT, SIR, YOU GOT RID OF YOUR CIGARETTES AGAIN; ISN'T THAT RIGHT?
A. YES.
Q. AND LESLIE WANTED TO SUPPORT YOU DURING THIS QUIT ATTEMPT, BUT SHE CONTINUED TO SMOKE HERSELF; ISN'T THAT TRUE?
A. YES.
Q. AND SHE WOULD SMOKE IN YOUR PRESENCE; ISN'T THAT TRUE?
A. WELL, SHE TRIED TO GO OUTSIDE. YOU KNOW, SHE'D TRY. SHE WASN'T FLAUNTING IT IN FRONT OF ME. SHE'D WAIT UNTIL I WAS OUT OF HER PRESENCE.
Q. SHE MAY NOT HAVE FLAUNTED IT IN FRONT OF YOU, BUT SHE CONTINUED TO SMOKE IN YOUR PRESENCE DURING THIS TIME PERIOD; CORRECT?
A. YES.
Q. ALL RIGHT, SIR.
YOU WERE NOT SUCCESSFUL IN THAT QUIT ATTEMPT, WERE YOU, SIR?
A. NO.
Q. THERE'S A THIRD TIME THAT YOU TRIED TO QUIT SMOKING --
A. YES.

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Q. -- YOU AND YOUR WIFE? OKAY, SIR.
UP UNTIL THIS -- WELL, LET'S DO IT THIS WAY:

3050

YOUR WIFE ENJOYED SMOKING, DIDN'T SHE, SIR?
A. YES.
Q. ALL RIGHT. OTHER THAN THE TIME IN YOSEMITE THAT WE TALKED ABOUT, THIS FINAL QUIT ATTEMPT THAT YOU AND I ARE GOING TO TALK ABOUT IN A MINUTE, SHE DIDN'T TELL YOU AT ANY OTHER TIME THAT SHE HAD A PERSISTENT DESIRE TO QUIT SMOKING; ISN'T THAT TRUE?
A. YES.
Q. ALL RIGHT, SIR. LET'S TURN TO THIS FINAL QUIT ATTEMPT.
I THINK YOU AND MR. BROWN DISCUSSED IT BRIEFLY. THIS HAPPENED IN 1998, IN FEBRUARY; IS THAT CORRECT?
A. YES.
Q. YOUR WIFE HAD BEEN DIAGNOSED WITH CHRONIC BRONCHITIS; IS THAT TRUE?
A. YES.
Q. AND WHEN SHE CAME HOME FROM THE DOCTOR'S APPOINTMENT WHERE SHE HAD BEEN WITH THE CHRONIC BRONCHITIS DIAGNOSIS, SHE TOLD YOU HOW TERRIBLY PAINFUL THIS EPISODE WAS FOR HER; IS THAT RIGHT?
A. YES.
Q. SHE TOLD YOU THAT THIS DOCTOR TOLD HER THAT SHE OUGHT TO QUIT SMOKING; ISN'T THAT RIGHT?
A. YES.
Q. SHE TOLD YOU THAT THE DOCTOR SAID IF SHE CONTINUED TO SMOKE, HER BRONCHITIS WOULD ONLY GET WORSE?
A. YES.
Q. ALL RIGHT, SIR. AND SHE ASKED YOU TO HELP HER

3051

AND QUIT SMOKING AT THAT TIME; RIGHT?
A. YES.
Q. YOU TOLD HER YOU WOULD, SIR; ISN'T THAT RIGHT?
A. YES.
Q. IN FACT, YOU WERE BOTH SUCCESSFUL IN QUITTING SMOKING; ISN'T THAT TRUE?
A. YES.
Q. AND SIR, YOU HAD A MORE DIFFICULT TIME QUITTING THAN YOUR WIFE LESLIE DID; ISN'T THAT TRUE?
A. I DON'T KNOW. I DON'T KNOW IF YOU COULD PUT IT THAT WAY. WE BOTH HAD DIFFICULTY. SHE COULDN'T SMOKE THEM ANY MORE. HER LUNGS HURT.
Q. SHE QUIT SMOKING COLD TURKEY; IS THAT RIGHT?
A. YES.
Q. YOU, SIR, HAD TO USE THE NICOTINE PATCH; ISN'T THAT RIGHT?
A. YES.
Q. IN FACT, YOUR WIFE LESLIE HAD A PRESCRIPTION FOR THE NICOTINE PATCH, BUT JUST CHOSE NOT TO USE IT; ISN'T THAT RIGHT?
A. I DON'T REMEMBER IF SHE HAD A PRESCRIPTION OR NOT.
Q. YOU JUST DON'T REMEMBER?
A. I DON'T REMEMBER.
Q. OKAY, SIR.
MR. WHITELEY, PRIOR TO YOUR WIFE AND YOU FILING THIS LAWSUIT, SHE NEVER TOLD YOU THAT SHE WAS ADDICTED TO CIGARETTES, DID SHE?

3052

A. I CAN'T PRECISELY SAY IF SHE DID OR NOT. SHE PROBABLY DID, BUT I DON'T KNOW. I CAN'T ANSWER THAT --

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Q. ALL RIGHT. LET'S TURN --
A. -- BECAUSE I DON'T HAVE A RECOLLECTION.
Q. LET'S TURN TO 189 OF YOUR DEPOSITION, LINE 22 THROUGH 190, LINE 1.
A. 189, WHAT?
Q. 189, LINE 22 THROUGH 190, LINE 1.
MR. BROWN: NO OBJECTION. I'M SORRY.
THE COURT: YOU MAY READ.
MS. MASON: "QUESTION: HAS YOUR WIFE EVER TOLD YOU THAT SHE THOUGHT SHE WAS ADDICTED TO CIGARETTES?
"ANSWER: NO, I DON'T RECALL HER EVER SAYING THAT. SHE MIGHT HAVE SAID IT, BUT I DON'T SPECIFICALLY RECALL HER EVER SAYING THAT."
Q. DID I READ THAT CORRECTLY, SIR?
A. YES.
Q. ALL RIGHT. SIR, LET'S TALK FOR A MINUTE ABOUT THE BRANDS OF CIGARETTES YOUR WIFE SMOKED.
NOW, I THINK WE'VE ALREADY ESTABLISHED THAT YOU MET HER IN 1983; IS THAT RIGHT?
A. YES.
Q. AND AT THE TIME YOU MET HER, SIR, SHE WAS SMOKING CAMEL LIGHT 100S; ISN'T THAT RIGHT?
A. I THINK SHE WAS SMOKING -- WHEN WE FIRST MET, SHE WAS SMOKING THE SHORTS OR CAMEL LIGHTS 100S. CAMEL LIGHTS, NOT THE CAMEL LIGHTS 100S.

3053

Q. ALL RIGHT, SIR. LET'S LOOK AT PAGE 78 OF THE DEPOSITION. MAYBE THAT WILL HELP REFRESH YOUR MEMORY.
A. I'M JUST TELLING YOU WHAT I RECALL RIGHT NOW. I REMEMBER SHE WAS SMOKING LIGHTS.
Q. OKAY. PAGE 78, LINE 5 THROUGH LINE 23.
A. 88?
Q. 78.
MR. BROWN: NO OBJECTION.
THE COURT: OKAY. YOU MAY READ.
MS. MASON: Q. PAGE 78, SIR.
A. 78 WHAT?
Q. LINE 5.
DO YOU HAVE IT THERE?
A. YES.
Q. "QUESTION: WHEN YOU BECAME REACQUAINTED WITH LESLIE AT OXNARD JUNIOR COLLEGE, DID YOU RECOGNIZE RIGHT AWAY THAT SHE WAS SOMEONE WHO SMOKED?
"ANSWER: YEAH.
"QUESTION: AND WHAT BRAND WAS SHE SMOKING AT THE TIME?
"ANSWER: I THINK SHE WAS SMOKING CAMEL LIGHTS, CAMEL LIGHT 100S.
"QUESTION: JUST SO THE RECORD IS CLEAR, YOU MENTIONED CAMEL LIGHTS, AND THEN YOU SAID CAMEL LIGHT 100S.
THEY ARE TWO DIFFERENT TYPES OF CIGARETTES, CORRECT?

3054

"ANSWER: BUT THEY'RE SO CLOSE TOGETHER, THEY'RE, YOU KNOW, ONE AND THE SAME. ONE'S A LITTLE LONGER THAN THE OTHER.
"QUESTION: RIGHT. BUT THEY COME IN DIFFERENT PACKAGES?
"ANSWER: YES, SIR.
"QUESTION: SO DO YOU REMEMBER WHICH ONE SHE WAS

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SMOKING?
"ANSWER: I THINK SHE WAS SMOKING THE 100S.
"QUESTION: THE CAMEL LIGHT 100S?
"ANSWER: CAMEL LIGHT 100S."
DID I READ THAT RIGHT, SIR?
A. YES.
Q. OKAY. AND SO ISN'T IT TRUE THAT YOUR WIFE TOLD YOU THAT SHE SMOKED CAMEL LIGHT 100S BECAUSE SHE HAD TRIED THEM AND LIKED THEM?
A. YEAH. I DON'T HAVE AN EXACT RECOLLECTION THERE EXACTLY.
SOMEHOW, I'M REMEMBERING THE LIGHTS AND LIGHT 100S TOO. MAYBE AT THAT TIME SHE WAS SMOKING BOTH OF THEM. THAT'S WHAT I WAS REFERRING TO THERE.
I KNOW SHE SAID SHE LIKED THE CAMEL LIGHTS, BECAUSE SHE LIKED THE TASTE OF THEM.
Q. SIR, DIDN'T SHE TELL YOU THAT SOMEONE OFFERED HER A CAMEL LIGHT 100, SHE TRIED IT, SHE LIKED THE FLAVOR BETTER THAN A MARLBORO, SO SHE STARTED SMOKING --
A. YES.
Q. LET ME FINISH, PLEASE. THAT'S OKAY.

3055

-- CAMEL LIGHT 100S; ISN'T THAT RIGHT?
A. YES.
Q. OKAY, SIR. SHE NEVER SAID TO YOU THAT SHE THOUGHT A LIGHT CIGARETTE WAS HEALTHIER THAN A FULL-FLAVORED CIGARETTE; ISN'T THAT TRUE?
A. NO, THAT ISN'T TRUE. SHE DID SAY THAT. SHE DID SAY THAT WHEN I HAD EMPHYSEMA --
Q. SIR, LET'S --
A. -- OR WHEN THAT ATTEMPT WAS.
Q. PAGE 224 OF YOUR DEPOSITION.
A. 224?
Q. 224. LINE 2 THROUGH LINE 13.
MR. BROWN: YOU MEAN TO 15? WHERE?
MS. MASON: NO, 13.
MR. BROWN: 13. OKAY.
THE COURT: I TAKE IT "OKAY" MEANS NO OBJECTION?
MR. BROWN: NO OBJECTION.
THE COURT: YOU CAN GO AHEAD.
MS. MASON: PAGE 224.
"QUESTION: SHE NEVER INDICATED TO YOU THAT SHE CONSIDERED THE LIGHT CIGARETTES TO BE SAFER THAN THE FULL-FLAVOR CIGARETTES?
"ANSWER: I DON'T RECALL HER EVER SAYING ANYTHING LIKE THAT.
"QUESTION: DID YOU EVER DISCUSS WITH HER ANY RELATIVE HEALTH BENEFITS OF SMOKING LIGHT CIGARETTES AS OPPOSED TO FULL-FLAVOR CIGARETTES?

3056

"ANSWER: I DON'T RECALL HER EVER SAYING ANYTHING LIKE THAT.
"QUESTION: DID YOU EVER SAY ANYTHING TO HER ABOUT THAT?
"ANSWER: NO."
Q. SIR, WERE THOSE THE ANSWERS YOU GAVE TO THOSE QUESTIONS?
A. YES, BUT I THOUGHT -- AT THE TIME I ANSWERED THAT, I THOUGHT I WAS REFERRING TO AN EARLIER TIME THAN WHAT I REFERRED TO EARLIER ABOUT THE EMPHYSEMA.
Q. SIR, THE QUESTION HERE WAS: DID SHE EVER SAY THAT TO YOU?

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A. YES. I KNOW THAT. I MUST HAVE MISSPOKE OR MISUNDERSTOOD THIS QUESTION.
Q. OKAY. SIR, I JUST WANT TO MAKE SURE I UNDERSTOOD THIS CORRECTLY.
DID YOU SAY ON DIRECT THAT YOU HAD HEARD OR READ ARTICLES FROM TOBACCO COMPANIES SAYING THAT CIGARETTE SMOKING WAS SAFE? IS THAT WHAT YOU SAID, SIR?
A. I HEARD -- I HAVE HEARD THE TOBACCO COMPANIES SAY BOTH. YOU KNOW, I HAVE HEARD -- I'VE HEARD -- I HEARD IT ON TELEVISION. A GOOD EXAMPLE IS WHEN YOU TESTIFIED IN FRONT OF CONGRESS.
Q. SIR, DID YOU SAY THAT YOU HAD HEARD TOBACCO COMPANIES IN ARTICLES SAY THAT CIGARETTE SMOKING WAS SAFE; WAS THAT YOUR TESTIMONY, THAT YOU HAD ACTUALLY HEARD THAT THAT THE COMPANIES ACTUALLY SAID THAT CIGARETTE SMOKING WAS SAFE?

3057

A. HAVEN'T THEY ALWAYS SAID THAT?
Q. I'M ASKING YOU, SIR, IF THAT WAS YOUR TESTIMONY, IF I UNDERSTOOD IT CORRECTLY?
A. YES, THAT WAS MY TESTIMONY.
Q. ALL RIGHT, SIR. LET'S LOOK AT YOUR DEPOSITION.
PAGE 165, LINES 13 THROUGH 21.
A. 13 THROUGH 21.
MR. BROWN: I'M OBJECTING TO IT ON 352. IT'S NOT WHAT THE CONVERSATION IS HERE.
THE COURT: I THINK THAT'S FOR THE JURY TO DECIDE. I'M GOING TO OVERRULE.
I HAVE DONE THE WEIGHING. I'M GOING TO ALLOW THE READING.
MR. BROWN: ALL RIGHT.
MS. MASON: "QUESTION: BUT MY QUESTION TO YOU IS THIS: HAVE YOU EVER SEEN AN ADVERTISEMENT OR ANY OTHER COMMUNICATION FROM A TOBACCO COMPANY THAT SAID TO YOU IN SO MANY WORDS THAT CIGARETTE SMOKING WAS SAFE?
"ANSWER: I THOUGHT I JUST ANSWERED THAT. I -- SPECIFICALLY, NO, I CAN'T."
Q. DID I READ THAT CORRECTLY, MR. WHITELEY?
A. YES.
Q. ALL RIGHT, SIR. ISN'T IT TRUE THAT YOU HEARD TIME AFTER TIME AFTER TIME THAT SMOKING COULD CAUSE LUNG CANCER?
A. FROM THE DIFFERENT -- FROM THE TOBACCO COMPANIES OR FROM WHO?

3058

Q. ANYWHERE.
A. YES. WE HEARD -- I HEARD PROS AND CONS OF BOTH.
Q. HAVEN'T YOU HEARD, SIR, THE MESSAGE TIME AFTER TIME AFTER TIME THAT SMOKING CAUSES LUNG CANCER?
A. I HEARD THAT.
MS. MASON: OKAY. THANK YOU, SIR. I HAVE NOTHING ELSE.
THE COURT: OKAY. MR. BROWN.
MR. FURR: NO QUESTIONS.
I APOLOGIZE.
THE COURT: THAT WAS ACTUALLY MY FAULT. I DIDN'T ASK YOU WHETHER YOU HAD ANY QUESTIONS. I JUST ASSUMED THAT. THAT WAS MY FAULT.
MR. BROWN: WITH REFERENCE TO THIS LAST BIT OF DEPOSITION THAT WAS READ FOR THE RECORD, I THINK THAT WAS READ, 165 LINES 13 THROUGH 21. I'D LIKE TO READ FROM PAGE 164, LINE 7 THROUGH LINE 24.

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MS. MASON: I DO HAVE AN OBJECTION, YOUR HONOR. I THINK HE OUGHT TO ASK THE WITNESS A QUESTION.
MR. BROWN: WHEN YOU READ FROM A DEPOSITION --
THE COURT: HOLD ON. I THINK I KNOW THE LAW IN THIS AREA.
IF THAT'S YOUR OBJECTION, IT'S OVERRULED.
MR. BROWN: ALL RIGHT.

REDIRECT EXAMINATION

MR. BROWN: "QUESTION: AT ANY TIME" --
MS. MASON: YOUR HONOR, CAN WE HAVE A SIDEBAR, PLEASE?
THE COURT: YES.
(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)
THE COURT: OKAY. AFTER A SIDEBAR, YOU ARE GOING TO CHANGE THE PARAMETERS OF THE READING, AND I THINK WITH THAT, THERE'S NO OBJECTION.
LET'S SEE. IS THAT ALL RIGHT?
MS. MASON: THAT'S RIGHT.
THE COURT: GO AHEAD.
MR. BROWN: I'M GOING TO READ FROM PAGE 163, 23 THROUGH 164, LINE 24.
THE COURT: ANY OBJECTION?
MS. MASON: NO, THAT'S FINE.
THE COURT: YOU MAY READ.
MR. BROWN: "QUESTION: CAN YOU THINK OF ANY SPECIFIC EXAMPLE OF SOMEONE TELLING YOU THAT SMOKING CIGARETTES WAS SAFE?
"ANSWER: I CAN'T THINK OF SPECIFICALLY ANYONE. I JUST REMEMBER CONSTANTLY THE TOBACCO COMPANIES TELLING US THAT THEY WERE SAFE.
"QUESTION: CAN YOU REMEMBER ANY SPECIFIC EXAMPLE OF A TOBACCO COMPANY TELLING YOU THAT CIGARETTE SMOKING WAS SAFE?
"ANSWER: OUTSIDE OF WHAT, BACK WHEN I WAS IN -- WHEN I WAS A TEENAGER?
"QUESTION: AT ANY TIME. CAN YOU REMEMBER ANY SPECIFIC INSTANCE OF A TOBACCO COMPANY TELLING YOU THAT CIGARETTE SMOKING WAS SAFE?
"ANSWER: I JUST -- I JUST REMEMBER HEARING STUFF ON THE NEWS. I COULDN'T BE PRECISE ON A SPECIFIC -- YOU WANT A SPECIFIC. I CAN'T TELL YOU A SPECIFIC. I CAN TELL YOU THAT I HEARD, ALL THE TIME, PROS AND CONS, THE TOBACCO SAYING ONE THING AND OTHER PEOPLE SAYING THE OTHER. PRESUMING THE GOVERNMENT.
"QUESTION: WHAT'S THE ONE THING, THAT CIGARETTES WERE SAFE?
"ANSWER: YEAH. I JUST REMEMBER -- I JUST REMEMBER PEOPLE IN GENERAL, OTHER PUBLIC, THE NEWSPAPERS, TV, RADIO, TALK SHOW HOSTS. I COULDN'T TELL YOU WHERE I EXACTLY HEARD THEM TALKING ABOUT IT, BUT THAT WAS THE THING -- YOU KNOW, AND BILLBOARDS, THOSE KIND OF THINGS WHERE IT'S LIKE -- YOU KNOW, IT'S A HEALTHY -- IT'S ALWAYS BEEN PROMOTED AS A HEALTHY PRODUCT."
JUST ONE OTHER QUESTION.
Q. AT ANY TIME DURING THE TIME THAT YOU WERE -- THAT YOU KNEW LESLIE WHITELEY, ESPECIALLY SINCE YOU WERE MARRIED TO HER, AND COMING DOWN INTO THE '90S AND UP UNTIL '94, WHEN

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THE DOCTOR HAD TOLD YOU ABOUT THIS FAST-TRACK TO EMPHYSEMA, DID YOU EVER HAVE ANY HINT THAT PEOPLE WHO SMOKED CIGARETTES HAD A ONE-IN-TWO CHANCE OF DYING FROM A SMOKING ILLNESS?

A. NO.

MR. BROWN: THAT'S ALL I HAVE.

THE COURT: ANYTHING FURTHER BY ANYBODY FOR MR. WHITELEY?

MS. MASON: NO, YOUR HONOR. THANK YOU.

THE COURT: OKAY. YOU MAY STEP DOWN.

(WITNESS EXCUSED)

LET'S TAKE OUR AFTERNOON RECESS.

JURORS, I NEED TO STOP AROUND 4:30 OR SOON THEREAFTER TODAY.

SO LET'S TAKE A 20-MINUTE RECESS TILL 3:15.

JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT 3:15

(RECESS TAKEN FROM 2:55 TO 3:20 P.M.)

THE COURT: WE ARE BACK ON THE RECORD.

WHAT IS NEXT?

MR. BROWN: YOUR HONOR, WE HAVE ENTERED INTO A STIPULATION WHICH WE DISCUSSED IN CHAMBERS.

(ATTORNEYS CONFER)

MR. BROWN: THE GOOD NEWS, THIS STIPULATION ELIMINATES THE NEXT WITNESS AND ABOUT 40 MINUTES OF TESTIMONY.

THE COURT: OKAY.

I BETTER GIVE YOU A COUPLE OF MINUTES TO WORK IT OUT.

MR. BROWN: IT'S A GOOD TRADE.

(ATTORNEYS CONFER)

THE COURT: I TOLD THE JURY AT THE BEGINNING OF THE CASE WHAT A STIPULATION WAS, SO WHEN YOU'RE READY TO READ IT INTO THE RECORD, YOU FEEL FREE TO DO IT.

MR. BROWN: THERE AREN'T ENOUGH LAWYERS TO UNDERSTAND WHAT THE EXPERT WAS GOING TO SAY.

THE COURT: LET ME JUST TELL THE JURY WHAT'S GOING ON. YOU TELL ME IF I HAVE THIS RIGHT OR NOT. INSTEAD OF CALLING A WITNESS TO GIVE CERTAIN TESTIMONY, YOU'RE ALL GOING TO STIPULATE -- IN THE INTEREST OF EFFICIENCY AND TIME AND SO FORTH, THAT YOU ARE GOING TO STIPULATE AS TO WHAT THIS WITNESS WOULD HAVE TESTIFIED, IF THIS WITNESS HAD BEEN CALLED AS A WITNESS, AND IT SHOULD BE DEEMED THAT THAT WITNESS WAS CALLED AND GAVE THAT TESTIMONY.

IS THAT CORRECT?

MR. HARDY: THAT'S CORRECT, YOUR HONOR.

THE COURT: OKAY.

MR. BROWN: THAT, PLUS JUST PERHAPS NOT A VERY SIGNIFICANT ITEM. OKAY.

THAT, PLUS THAT THE DEFENDANTS ARE NOT OFFERING ANY EVIDENCE IN CONTRADICTION.

THE COURT: WHY DON'T YOU DO THIS: WHATEVER THE STIPULATION IS, WHY DON'T YOU STATE IT FROM START TO FINISH RIGHT NOW.

THEN I WILL ASK THE DEFENSE WHETHER THAT'S SO STIPULATED.

(ATTORNEYS CONFER)

MR. BROWN: SO, YOUR HONOR, IF YOU ARE READY -- I'M NOT SURE WHERE WE ARE.

SHOULD I JUST ANNOUNCE WHAT IT IS?

THE COURT: YES. WHY DON'T YOU DO THIS. WHY DON'T YOU, ASSUMING YOU'VE WORKED IT OUT -- JURORS, PLEASE.

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-- WHY DON'T YOU STATE WHAT THE STIPULATION IS OR WHAT
YOU'RE UNDERSTANDING OF IT IS.
AND THEN I WILL ASK BOTH SIDES WHETHER THEY STIPULATE -- THAT IS, ALL PARTIES, WHETHER THEY STIPULATE TO WHATEVER THAT YOU STATED WAS THE STIPULATION.
MR. BROWN: IF THERE'S NO OBJECTION, I'D JUST LIKE TO WRITE THE NUMBER UP THERE SO THEY CAN SEE IT.
MR. HARDY: THAT'S ALL RIGHT.
MR. BROWN: THE STIPULATION IS THAT A QUALIFIED EXPERT OPINION OF THE PRESENT VALUE OF MR. WHITELEY'S LOSS OF HOUSEHOLD SERVICES IS THE SUM $763,546.
THE COURT: LET ME ASK YOU: DO YOU ALL SO STIPULATE?
YOU OBVIOUSLY DO, MR. BROWN?
MR. BROWN: I DO.
THE COURT: LET'S HEAR FROM THE OTHERS.
IS THAT A STIPULATION?
MR. HARDY: YES, YOUR HONOR.
MR. FURR: YES, YOUR HONOR.
MR. ROSSE: YES, YOUR HONOR.
THE COURT: OKAY.
(ATTORNEYS CONFER)
THE COURT: WHAT IS THE NEXT ORDER OF BUSINESS?
MR. BROWN: A VIDEO DEPOSITION.
THE COURT: OKAY.
MS. CHABER: YES, YOUR HONOR. AT THIS TIME, THE PLAINTIFFS WOULD PROPOSE SHOWING A VIDEO THAT CORRESPONDS TO PRIOR TESTIMONY OF JOSEPH BUMGARNER.
THE COURT: CAN YOU SPELL THAT NAME.

MS. CHABER: SOMETIMES. I THINK IT'S B-U-M --
THE COURT: I WANT TO GET IT RIGHT, WHATEVER IT IS.
MR. ESCHER: HERE IT IS. B-U-M-G-A-R-N-E-R.
THE COURT: B-U-M-G-A-R-N-E-R?
MR. ESCHER: THAT'S RIGHT, YOUR HONOR.
THE COURT: THE FULL NAME JOSEPH --
MR. ESCHER: JOSEPH E. BUMGARNER.
THE COURT: THIS IS A VIDEOTAPE DEPOSITION THAT YOU WANT TO PLAY FOR THE JURY?
MS. CHABER: YES.
THE COURT: LET'S HANDLE THE MARKING OF THIS.
MS. CHABER: YES.
EXCUSE ME ONE SECOND.
I WILL HAVE MARKED, YOUR HONOR, THE TRANSCRIPT OF WHAT WILL BE SHOWN. IT'S DATED NOVEMBER 11TH, 1996.
THE CLERK: PLAINTIFFS' EXHIBIT 1921.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1921)
MS. CHABER: AND I WOULD PROPOSE THAT THE COURT REPORTER DOES NOT NEED TO REPORT THIS, YOUR HONOR.
AND THERE'S A COPY FOR THE COURT.
THE COURT: DO YOU WANT TO, THOUGH, MARK THE VIDEOTAPE ITSELF AT SOME POINT? WE NEED TO DO THAT FOR IDENTIFICATION ONLY.
MS. CHABER: SINCE IT'S SET UP AND READY TO

GO --
THE COURT: THAT'S FINE. BUT WE NEED TO JUST REMEMBER TO DO IT AT SOME POINT.

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MS. CHABER: YES.
THE COURT: WE CAN DO IT AFTER YOU PLAY IT, WHATEVER YOU WANT.
IS THIS THE AGREEMENT? LET ME JUST BE SURE WE ALL HAVE IT RIGHT.
WHAT IS BEING PLAYED ON THIS VIDEO IS WHAT IS BEING INDICATED ON 1921; IN OTHER WORDS, IT'S THE MATERIAL ON 1921 THAT ISN'T CROSSED OUT?
MS. CHABER: CORRECT.
THE COURT: AND THAT THE COURT REPORTER NEED NOT TAKE DOWN THE PLAYING OF THE VIDEO, BUT 1921 FOR IDENTIFICATION WILL STAND IN ITS PLACE AS TO WHAT WAS PLAYED ON THE VIDEO?
MR. ESCHER: YOUR HONOR, JUST ONE CLARIFICATION.
THERE IS A SMALL PORTION OF THE VIDEOTAPE WHICH IS MISSING. AND WE ARE GOING TO HAVE TO READ INTO THE RECORD A PORTION OF THE TRANSCRIPT, WHICH IS 1921.
AND WE'LL GET TO THAT AT THAT POINT, BUT IT'S NOT ON THE VIDEOTAPE.
THE COURT: OKAY.
ARE WE GOING TO STOP THE VIDEO WHEN WE GET TO THAT POINT AND READ IT?
MR. ESCHER: YES, YOUR HONOR.
THE COURT: SO LET ME MODIFY WHAT I SAID AND SEE

3066

IF I HAVE IT RIGHT NOW.
WHAT WILL BE SHOWN TO THE JURY ON THE VIDEO OR READ TO THE JURY ARE THOSE PORTIONS THAT ARE NOT CROSSED OFF ON 1921 FOR IDENTIFICATION?
AND THE COURT REPORTER NEED NOT TAKE DOWN EITHER THE PLAYING OF VIDEO OR THE READING FROM THE TRANSCRIPT?
MR. ESCHER: THAT IS CORRECT, YOUR HONOR.
MS. CHABER: YES.
THE COURT: SO THAT'S WHAT WE'LL DO.
ARE WE READY TO GO OFF THE RECORD FOR THE PLAYING OF THE VIDEO NOW?
MS. CHABER: I HOPE SO.
(DISCUSSION OFF THE RECORD)
THE COURT: BACK ON THE RECORD.
IF ANYBODY WANTS TO GO BACK ON THE RECORD, YOU NEED TO STATE "BACK ON THE RECORD" BEFORE YOU SPEAK, SO THAT JUDITH KNOWS THAT IT'S TIME FOR HER TO GET BACK TO WORK.
WE ARE OFF THE RECORD.
(VIDEOTAPE SHOWN)
THE COURT: WE ARE BACK ON THE RECORD.
AND THE RECORD SHOULD REFLECT THAT WE HAVE PLAYED THE VIDEOTAPE UP TO PAGE 139, LINE 13, WHERE WE WILL PICK UP FIRST THING TOMORROW MORNING.
COULD SOMEBODY BE GOOD ENOUGH TO TURN THE LIGHTS ON, PLEASE.
JURORS, OVER THE EVENING, PLEASE CONTINUE TO FOLLOW THE ADMONITION.
AND WE ARE GOING TO START TOMORROW AT 9:00

3067

O'CLOCK. I'D LIKE TO GET IN A GOOD LONG DAY TOMORROW, BECAUSE, AS YOU KNOW, WE ARE NOT GOING TO BE HERE ON FRIDAY AND I DON'T HAVE ANYTHING ELSE ON THE CALENDAR TOMORROW. SO I'D LIKE TO PLAN TO GO TOMORROW FROM 9:00 TO 5:00.
HAVE A GOOD EVENING, AND LET'S PLEASE BE HERE BY 9:00 SHARP TOMORROW.
(THE PROCEEDINGS ADJOURNED AT 4:30 P.M.)

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